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HOUSE BILL NO. 1677

Offered January 17, 2020

A BILL to amend and reenact §§ 2.2-2279, 10.1-1186.2:1, 10.1-1197.6, 10.1-1197.8, 10.1-1307.02, 10.1-1402.03, 13.1-620, 15.2-1901, 15.2-2232, 15.2-2288.7, 15.2-2316.2, 15.2-5401, 15.2-5402, 15.2-5406, 15.2-5406.1, 15.2-5407, 15.2-5408, 15.2-5410, 15.2-5415, 15.2-5418, 15.2-5423, 15.2-5425, 15.2-5431, 30-201, 30-202, 30-205, 30-209, 33.2-272, 45.1-399, 56-1, 56-1.2, 56-16.1, 56-41.1, 56-46.1, 56-49, 56-88, 56-231.15, 56-231.16, 56-231.23, 56-231.24, 56-231.32, 56-231.34, 56-231.34:1, 56-231.36, 56-231.38, 56-231.39, 56-231.43, 56-231.47, 56-231.50, 56-231.50:1, 56-231.51, 56-232, 56-234 through 56-234.3, 56-235.1, 56-235.2, 56-235.3, 56-235.4, 56-235.6, 56-235.8, 56-235.12, 56-236.2, 56-238, 56-245.1:1, 56-245.3, 56-247.1, 56-250, 56-254, 56-255, 56-256, 56-261, 56-265.1, 56-265.2, 56-265.3, 56-265.4:1, 56-265.4:2, 56-265.4:5, 56-265.8:1, 56-466.2, 58.1-400.3, 58.1-2900, 58.1-3221.4, 58.1-3506, 58.1-3814, 62.1-44.15:21, 67-101, 67-1100, 67-1206, and 67-1505 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 15.2-5416.1 and by adding in Title 56 a chapter numbered 29, consisting of sections numbered 56-614 through 56-647; and to repeal §§ 15.2-5409, 15.2-5416, 56-235.1:1, 56-235.7, 56-236.1, 56-245.1:2, 56-249.3, 56-249.4, and 56-249.6, Chapter 23 (§§ 56-576 through 56-596.3) of Title 56, Chapter 24 (§§ 56-597, 56-598, and 56-599) of Title 56, and § 67-202.1 of the Code of Virginia and Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, relating to electric utility regulation; retail energy choice.

Patrons—Keam and Ware

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2279, 10.1-1186.2:1, 10.1-1197.6, 10.1-1197.8, 10.1-1307.02, 10.1-1402.03, 13.1-620, 15.2-1901, 15.2-2232, 15.2-2288.7, 15.2-2316.2, 15.2-5401, 15.2-5402, 15.2-5406, 15.2-5406.1, 15.2-5407, 15.2-5408, 15.2-5410, 15.2-5415, 15.2-5418, 15.2-5423, 15.2-5425, 15.2-5431, 30-201, 30-202, 30-205, 30-209, 33.2-272, 45.1-399, 56-1, 56-1.2, 56-16.1, 56-41.1, 56-46.1, 56-49, 56-88, 56-231.15, 56-231.16, 56-231.23, 56-231.24, 56-231.32, 56-231.34, 56-231.34:1, 56-231.36, 56-231.38, 56-231.39, 56-231.43, 56-231.47, 56-231.50, 56-231.50:1, 56-231.51, 56-232, 56-234 through 56-234.3, 56-235.1, 56-235.2, 56-235.3, 56-235.4, 56-235.6, 56-235.8, 56-235.12, 56-236.2, 56-238, 56-245.1:1, 56-245.3, 56-247.1, 56-250, 56-254, 56-255, 56-256, 56-261, 56-265.1, 56-265.2, 56-265.3, 56-265.4:1, 56-265.4:2, 56-265.4:5, 56-265.8:1, 56-466.2, 58.1-400.3, 58.1-2900, 58.1-3221.4, 58.1-3506, 58.1-3814, 62.1-44.15:21, 67-101, 67-1100, 67-1206, and 67-1505 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-5416.1 and by adding in Title 56 a chapter numbered 29, consisting of sections numbered 56-614 through 56-647, as follows:

§ 2.2-2279. Short title; definitions.

A. This article shall be known and may be cited as the "Virginia Small Business Financing Act."

B. As used in this article, unless the context requires a different meaning:

"Business enterprise" means any (i) industry for the manufacturing, processing, assembling, storing, warehousing, servicing, distributing, or selling of any products of agriculture, mining, or industry or professional services; (ii) commercial enterprise making sales or providing services to industries described in clause (i); (iii) enterprise for research and development, including scientific laboratories; (iv) not-for-profit entity operating in the Commonwealth; (v) entity acquiring, constructing, improving, maintaining, or operating a qualified transportation facility under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.); (vi) entity acquiring, constructing, improving, maintaining, or operating a qualified energy project; (vii) entity acquiring, constructing, improving, maintaining, or operating a qualified pollution control project; (viii) entity that modernizes public school buildings or facilities pursuant to Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title 22.1; or (ix) other business as will be in furtherance of the public purposes of this article.

"Cost," as applied to the eligible business, means the cost of construction; the cost of acquisition of all lands, structures, rights-of-way, franchises, easements, and other property rights and interests; the cost of demolishing, removing, rehabilitating, or relocating any buildings or structures on lands acquired, including the cost of acquiring any such lands to which such buildings or structures may be moved, rehabilitated, or relocated; the cost of all labor, materials, machinery and equipment, financing charges, letter of credit or other credit enhancement fees, insurance premiums, interest on all bonds prior to and during construction or acquisition and, if deemed advisable by the Authority, for a period not exceeding

one year after completion of such construction or acquisition, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, commissions, guaranty fees, other expenses necessary or incident to determining the feasibility or practicality of constructing, financing, or operating a project of an eligible business; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions, improvements and replacements, and such other expenses as may be necessary or incidental to the construction or acquisition of a project of an eligible business or the financing of such construction, acquisition, or expansion and the placing of a project of an eligible business in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the Authority for studies, surveys, borings, preparation of plans and specifications, or other work or materials in connection with the construction or acquisition of a project of an eligible business may be regarded as a part of the cost of a project of an eligible business and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued therefor.

"Eligible business" means any person engaged in one or more business enterprises in the Commonwealth that satisfies one or more of the following requirements: (i) is a for-profit enterprise that (a) has received $10 million or less in annual gross income under generally accepted accounting principles for each of its last three fiscal years or lesser time period if it has been in existence less than three years, (b) has fewer than 250 employees, (c) has a net worth of $2 million or less, (d) exists for the sole purpose of developing or operating a qualified transportation facility under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.), (e) exists for the primary purpose of developing or operating a qualified energy project, (f) is required by state or federal law to develop or operate a qualified pollution control project, or (g) meets such other satisfactory requirements as the Board shall determine from time to time if it finds and determines such person is in need of its assistance or (ii) is a not-for-profit entity granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating in the Commonwealth.

"Federal Act" means the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as amended from time to time.

"Indenture" means any trust agreement, deed of trust, mortgage, or other security agreement under which bonds authorized pursuant to this article shall be issued or secured.

"Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended.

"Lender" means any federal- or state-chartered bank, federal land bank, production credit association, bank for cooperatives, federal- or state-chartered savings institution, building and loan association, small business investment company, or any other financial institution qualified within the Commonwealth to originate and service loans, including insurance companies, credit unions, investment banking or brokerage companies, and mortgage loan companies.

"Loan" means any lease, loan agreement, or sales contract defined as follows:

1. "Lease" means any lease containing an option to purchase the project or projects of the eligible business being financed for a nominal sum upon payment in full, or provision thereof, of all bonds issued in connection with the eligible business and all interest thereon and principal of and premium, if any, thereon and all other expenses in connection therewith.

2. "Loan agreement" means an agreement providing for a loan of proceeds from the sale and issuance of bonds by the Authority or by a lender with which the Authority has contracted to loan such proceeds to one or more contracting parties to be used to pay the cost of one or more projects of an eligible business and providing for the repayment of such loan including all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, by such contracting party or parties and which may provide for such loans to be secured or evidenced by one or more notes, debentures, bonds, or other secured or unsecured debt obligations of such contracting party or parties, delivered to the Authority or to a trustee under an indenture pursuant to which the bonds were issued.

3. "Sales contract" means a contract providing for the sale of one or more projects of an eligible business to one or more contracting parties and includes a contract providing for payment of the purchase price including all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, in one or more installments. If the sales contract permits title to a project being sold to an eligible business to pass to such contracting party or parties prior to payment in full of the entire purchase price, it also shall provide for such contracting party or parties to deliver to the Authority or to the trustee under the indenture pursuant to which the bonds were issued, one or more notes, debentures, bonds, or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments of the purchase price thereof.

"Municipality" means any county or incorporated city or town in the Commonwealth.

"Preferred lender" means a bank that is subject to continuing supervision and examination by state or federal chartering, licensing, or similar regulatory authority satisfactory to the Authority and that meets the eligibility requirements established by the Authority.

"Qualified energy project" means a solar-powered or wind-powered electricity generation facility located in the Commonwealth ~~on premises owned or leased by an eligible customer-generator, as defined in § 56-594~~, the electricity generated from which is sold ~~exclusively to the eligible customer-generator~~ under a power purchase agreement used to provide ~~third party~~ *third-party* financing of the costs of such a renewable generation facility (third party power purchase agreement) pursuant to a pilot program established under *former* Chapter 382 of the Acts of Assembly of 2013.

"Qualified pollution control project" means environmental pollution control and prevention equipment certified by the business enterprise or eligible business as being needed to comply with the federal Clean Air Act (42 U.S.C. § 7401 et seq.), the federal Clean Water Act (33 U.S.C. § 1251 et seq.), or the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

"Revenues" means any and all fees, rates, rentals, profits, and receipts collected by, payable to, or otherwise derived by, the Authority, and all other moneys and income of whatsoever kind or character collected by, payable to, or otherwise derived by, the Authority in connection with loans to any eligible business in furtherance of the purposes of this article.

"Statewide Development Company" means the corporation chartered under this article for purposes of qualification as a state development company as such term is defined in the Federal Act.

§ 10.1-1186.2:1. Impact of electric generating facilities.

A. The Department and the State Air Pollution Control Board have the authority to consider the cumulative impact of new and proposed electric generating facilities within the Commonwealth on attainment of the national ambient air quality standards.

B. The Department shall enter into a memorandum of agreement with the State Corporation Commission regarding the coordination of reviews of the environmental impacts of proposed electric generating facilities that must obtain certificates from the State Corporation Commission. When considering the environmental impact of any renewable energy ~~(~~, *as* defined in § ~~56-576)~~ *56-1,* electrical utility facility, the Department shall consult with interested agencies of the Commonwealth that have expertise in natural resource management. The Department shall submit recommendations to the State Corporation Commission that take into account the information and comments submitted by such natural resource agencies concerning the potential environmental impacts of the proposed electric generating facility. The Department's recommendations shall include~~:~~ (i) specific mitigation measures considered necessary to minimize adverse environmental impacts; (ii) any additional site-specific studies considered to be necessary; and (iii) the scope and duration of any such studies. Nothing in this subsection shall alter or affect the Rules of Practice and Procedure of the State Corporation Commission.

C. Prior to the close of the Commission's record on an application for certification of an electric generating facility ~~pursuant to § 56-580~~, the Department shall provide to the State Corporation Commission a list of all environmental permits and approvals that are required for the proposed electric generating facility and shall specify any environmental issues, identified during the review process, that are not governed by those permits or approvals or are not within the authority of, and not considered by, the Department or other participating governmental entity in issuing such permits or approvals. The Department may recommend to the Commission that the Commission's record remain open pending completion of any required environmental review, approval or permit proceeding. All agencies of the Commonwealth shall provide assistance to the Department, as requested by the Director, in preparing the information required by this subsection.

§ 10.1-1197.6. Permit by rule for small renewable energy projects.

A. Notwithstanding the provisions of § 10.1-1186.2:1, the Department shall develop, by regulations to be effective as soon as practicable, but not later than July 1, 2012, a permit by rule or permits by rule if it is determined by the Department that one or more such permits by rule are necessary for the construction and operation of small renewable energy projects, including such conditions and standards necessary to protect the Commonwealth's natural resources. If the Department determines that more than a single permit by rule is necessary, the Department initially shall develop the permit by rule for wind energy, which shall be effective as soon as practicable, but not later than January 1, 2011. Subsequent permits by rule regulations shall be effective as soon as practicable.

B. The conditions for issuance of the permit by rule for small renewable energy projects shall include:

1. A notice of intent provided by the applicant, to be published in the Virginia Register, that a person intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. A certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

3. Copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. A copy of the final interconnection agreement between the small renewable energy project and the

regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the Department. The Department shall forward a copy of the agreement or study to the State Corporation Commission;

5. A certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small renewable energy project by (i) an electrical generation facility that generates electricity only from sunlight or wind as designed does not exceed 150 megawatts; (ii) an electrical generation facility that generates electricity only from falling water, wave motion, tides, or geothermal power as designed does not exceed 100 megawatts; or (iii) an electrical generation facility that generates electricity only from biomass, energy from waste, or municipal solid waste as designed does not exceed 20 megawatts;

6. An analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. Where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. If the Department determines that the information collected pursuant to subdivision B 7 indicates that significant adverse impacts to wildlife or historic resources are likely, the submission of a mitigation plan detailing reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions;

9. A certification signed by a professional engineer licensed in Virginia that the small renewable energy project is designed in accordance with all of the standards that are established in the regulations applicable to the permit by rule;

10. An operating plan describing how any standards established in the regulations applicable to the permit by rule will be achieved;

11. A detailed site plan with project location maps that show the location of all components of the small renewable energy project, including any towers. Changes to the site plan that occur after the applicant has submitted an application shall be allowed by the Department without restarting the application process, if the changes were the result of optimizing technical, environmental, and cost considerations, do not materially alter the environmental effects caused by the facility, or do not alter any other environmental permits that the Commonwealth requires the applicant to obtain;

12. A certification signed by the applicant that the small renewable energy project has applied for or obtained all necessary environmental permits;

13. A requirement that the applicant hold a public meeting. The public meeting shall be held in the locality or, if the project is located in more than one locality in a place proximate to the location of the proposed project. Following the public meeting, the applicant shall prepare a report summarizing the issues raised at the meeting, including any written comments received. The report shall be provided to the Department; and

14. A 30-day public review and comment period prior to authorization of the project.

C. The Department's regulations shall establish a schedule of fees, to be payable by the owner or operator of the small renewable energy project regulated under this article, which fees shall be assessed for the purpose of funding the costs of administering and enforcing the provisions of this article associated with such operations including, but not limited to, the inspection and monitoring of such projects to ensure compliance with this article.

D. The owner or operator of a small renewable energy project regulated under this article shall be assessed a permit fee in accordance with the criteria set forth in the Department's regulations. Such fees shall include an additional amount to cover the Department's costs of inspecting such projects.

E. The fees collected pursuant to this article shall be used only for the purposes specified in this article and for funding purposes authorized by this article to abate impairments or impacts on the Commonwealth's natural resources directly caused by small renewable energy projects.

F. There is hereby established a special, nonreverting fund in the state treasury to be known as the Small Renewable Energy Project Fee Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to this § 10.1-1197.6 shall be paid into the state treasury to the credit of the Fund. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. The Fund shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

G. After the effective date of regulations adopted pursuant to this section, no person shall erect, construct, materially modify or operate a small renewable energy project except in accordance with this article or Title 56 if the small renewable energy project was approved pursuant to Title 56.

H. Any small renewable energy project shall be eligible for permit by rule under this section if the project is proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56.

I. Any small renewable energy project commencing operations after July 1, 2017, shall be eligible for permits by rule under this section and is exempt from State Corporation Commission environmental review or permitting in accordance with subsection B of § 10.1-1197.8 or other applicable law if the project is proposed, developed, constructed, or purchased by:

1. A public utility if the project's costs are not recovered from Virginia jurisdictional customers under base rates~~, a fuel factor charge under § 56-249.6, or a rate adjustment clause under subdivision A 6 of § 56-585.1~~; or

2. A utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56.

§ 10.1-1197.8. Limitation of State Corporation Commission authority.

A. If the owner or operator of a small renewable energy project to whom the Department has authorized a permit by rule pursuant to this article is not a utility regulated pursuant to Title 56, then the State Corporation Commission shall not have jurisdiction to review the small renewable energy project or to condition the construction or operation of a small renewable energy project upon the State Corporation Commission's issuance of any permit or certificate under any provision of Title 56, provided that the State Corporation Commission shall retain jurisdiction to resolve requests for joint use of the rights of way of public service corporations pursuant to § 56-259 and denials of requests for interconnection of facilities ~~pursuant to § 56-578~~.

B. If the owner or operator of a small renewable energy project for which the Department has authorized a permit by rule pursuant to this article is a utility regulated pursuant to Title 56, such small renewable energy project shall be exempt from any provision of § 56-46.1 ~~and any corresponding provision of subsection D of § 56-580~~ or Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 that requires environmental review and permitting by the State Corporation Commission. An owner or operator of a small renewable energy project that is granted a permit by rule pursuant to subsection I of § 10.1-1197.6, shall not be required to obtain a certificate of public convenience and necessity pursuant to ~~subsection D of § 56-580 or~~ the Utility Facilities Act (§ 56-265.1 et seq.). Nothing in this section shall affect the jurisdiction of the State Corporation Commission regarding a utility that is not eligible for a permit by rule, or the requirement of such utility to obtain a certificate of public convenience and necessity.

§ 10.1-1307.02. Permit for generation of electricity during ISO-declared emergency.

A. As used in this section:

"Emergency generation source" means a stationary internal combustion engine that operates according to the procedures in the ISO's emergency operations manual during an ISO-declared emergency.

"ISO-declared emergency" means a condition that exists when the independent *distribution* system operator, as defined in § ~~56-576~~ *56-614*, notifies electric utilities that an emergency exists or may occur and that complies with the definition of "emergency" adopted by the Board pursuant to subsection B.

"Retail customer" has the same meaning ascribed thereto in § ~~56-576~~ *56-614*.

B. The Board shall adopt a general permit or permits for the use of back-up generation to authorize the construction, installation, reconstruction, modification, and operation of emergency generation sources during ISO-declared emergencies. Such general permit or permits shall include a definition of "emergency" that is compatible with the ISO's emergency operations manual. After adoption of such general permit or permits, any amendments to the Board's regulations necessary to carry out the provisions of this section shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

§ 10.1-1402.03. Closure of certain coal combustion residuals units.

A. For the purposes of this section only:

"Carrying cost" means the cost associated with financing expenditures incurred but not yet recovered from the electric utility's customers, and shall be calculated by applying the electric utility's weighted average cost of debt and equity capital, as determined by the State Corporation Commission, with no additional margin or profit, to any unrecovered balances.

"CCR landfill" means an area of land or an excavation that receives CCR and is not a surface impoundment, underground injection well, salt dome formation, salt bed formation, underground or surface coal mine, or cave and that is owned or operated by an electric utility.

"CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area that (i) is designed to hold an accumulation of CCR and liquids; (ii) treats, stores, or disposes of CCR; and (iii) is owned or operated by an electric utility.

"CCR unit" means any CCR landfill, CCR surface impoundment, lateral expansion of a CCR unit, or combination of two or more such units that is owned by an electric utility. Notwithstanding the

provisions of 40 C.F.R. Part 257, "CCR unit" also includes any CCR below the unit boundary of the CCR landfill or CCR surface impoundment.

"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by an electric utility.

"Encapsulated beneficial use" means a beneficial use of CCR that binds the CCR into a solid matrix and minimizes its mobilization into the surrounding environment.

The definitions in this subsection shall be interpreted in a manner consistent with 40 C.F.R. Part 257, except as expressly provided in this section.

B. The owner or operator of any CCR unit located within the Chesapeake Bay watershed at the Bremo Power Station, Chesapeake Energy Center, Chesterfield Power Station, and Possum Point Power Station that ceased accepting CCR prior to July 1, 2019, shall complete closure of such unit by (i) removing all of the CCR in accordance with applicable standards established by Virginia Solid Waste Management Regulations (9VAC20-81) and (ii) either (a) beneficially reusing all such CCR in a recycling process for encapsulated beneficial use or (b) disposing of the CCR in a permitted landfill on the property upon which the CCR unit is located, adjacent to the property upon which the CCR unit is located, or off of the property on which the CCR unit is located, that includes, at a minimum, a composite liner and leachate collection system that meets or exceeds the federal Criteria for Municipal Solid Waste Landfills pursuant to 40 C.F.R. Part 258. The owner or operator shall beneficially reuse a total of no less than 6.8 million cubic yards in aggregate of such removed CCR from no fewer than two of the sites listed in this subsection where CCR is located.

C. The owner or operator shall complete the closure of any such CCR unit required by this section no later than 15 years after initiating the closure process at that CCR unit. During the closure process, the owner or operator shall, at its expense, offer to provide a connection to a municipal water supply, or where such connection is not feasible provide water testing, for any residence within one-half mile of the CCR unit.

D. Where closure pursuant to this section requires that CCR or CCR that has been beneficially reused be removed off-site, the owner or operator shall develop a transportation plan in consultation with any county, city, or town in which the CCR units are located and any county, city, or town within two miles of the CCR units that minimizes the impact of any transport of CCR on adjacent property owners and surrounding communities. The transportation plan shall include (i) alternative transportation options to be utilized, including rail and barge transport, if feasible, in combination with other transportation methods necessary to meet the closure timeframe established in subsection C, and (ii) plans for any transportation by truck, including the frequency of truck travel, the route of truck travel, and measures to control noise, traffic impact, safety, and fugitive dust caused by such truck travel. Once such transportation plan is completed, the owner or operator shall post it on a publicly accessible website. The owner or operator shall provide notice of the availability of the plan to the Department and the chief administrative officers of the consulting localities and shall publish such notice once in a newspaper of general circulation in such locality.

E. The owner or operator of any CCR unit subject to the provisions of subsection B shall accept and review proposals to beneficially reuse any CCR that are not subject to an existing contractual agreement to remove CCR pursuant to the provisions of subsection B every four years beginning July 1, 2022. Any entity submitting such a proposal shall provide information from which the owner or operator can determine (i) the amount of CCR that will be utilized for encapsulated beneficial use; (ii) the cost of such beneficial reuse of such CCR; and (iii) the guaranteed timeframe in which the CCR will be utilized.

F. In conducting closure activities described in subsection B, the owner or operator shall (i) identify options for utilizing local workers, (ii) consult with the Commonwealth's Chief Workforce Development Officer on opportunities to advance the Commonwealth's workforce goals, including furtherance of apprenticeship and other workforce training programs to develop the local workforce, and (iii) give priority to the hiring of local workers.

G. No later than October 1, 2022, and no less frequently than every two years thereafter until closure of all of its CCR units is complete, the owner or operator of any CCR unit subject to the provisions of subsection B shall compile the following two reports:

1. A report describing the owner's or operator's closure plan for all such CCR units; the closure progress to date, both per unit and in total; a detailed accounting of the amounts of CCR that have been and are expected to be beneficially reused from such units, both per unit and in total; a detailed accounting of the amounts of CCR that have been and are expected to be landfilled from such units, both per unit and in total; a detailed accounting of the utilization of transportation options and a transportation plan as required by subsection D; and a discussion of groundwater and surface water monitoring results and any measures taken to address such results as closure is being completed.

2. A report that contains the proposals and analysis for proposals required by subsection E.

The owner or operator shall post each such report on a publicly accessible website and shall submit each such report to the Governor, the Secretary of Natural Resources, the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources, the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources, the Chairman of the Senate Committee on Commerce and Labor, the Chairman of the House Committee on Commerce and Labor, and the Director.

H. All costs associated with closure of a CCR unit in accordance with this section shall be recoverable ~~through a rate adjustment clause~~ *to the extent and in such manner as may be* authorized by the State Corporation Commission (the Commission) ~~under the provisions of subdivision A 5 e of § 56-585.1~~, provided that (i) when determining the reasonableness of such costs the Commission shall not consider closure in place of the CCR unit as an option; (ii) the annual revenue requirement recoverable ~~through a rate adjustment clause authorized under this section, exclusive of any other rate adjustment clauses approved by the Commission under the provisions of subdivision A 5 e of § 56-585.1,~~ shall not exceed $225 million on a Virginia jurisdictional basis for the Commonwealth in any 12-month period, provided that any under-recovery amount of revenue requirements incurred in excess of $225 million in a given 12-month period, limited to the under-recovery amount and the carrying cost, shall be deferred and recovered ~~through the rate adjustment clause~~ over up to three succeeding 12-month periods without regard to this limitation, and with the length of the amortization period being determined by the Commission; (iii) costs may begin accruing on July 1, 2019, but no approved ~~rate adjustment clause~~ charges shall be included in customer bills until July 1, 2021; (iv) any such costs shall be allocated to all customers of the utility in the Commonwealth as a non-bypassable charge, irrespective of the generation supplier of any such customer; and (v) any such costs that are allocated to the utility's system customers outside of the Commonwealth that are not actually recovered from such customers shall be included for cost recovery from jurisdictional customers in the Commonwealth ~~through the rate adjustment clause~~.

I. Any electric public utility subject to the requirements of this section may~~, without regard for whether it has petitioned for any rate adjustment clause pursuant to subdivision A 5 e of § 56-585.1,~~ petition the Commission for approval of a plan for CCR unit closure at any or all of its CCR unit sites listed in subsection B. Any such plan shall take into account site-specific conditions and shall include proposals to beneficially reuse no less than 6.8 million cubic yards of CCR in aggregate from no fewer than two of the sites listed in subsection B. The Commission shall issue its final order with regard to any such petition within six months of its filing, and in doing so shall determine whether the utility's plan for CCR unit closure, and the projected costs associated therewith, are reasonable and prudent, taking into account that closure in place of any CCR unit is not to be considered as an option. The Commission shall not consider plans that do not comply with subsection B.

J. Nothing in this section shall be construed to require additional beneficial reuse of CCR at any active coal-fired electric generation facility if such additional beneficial reuse results in a net increase in truck traffic on the public roads of the locality in which the facility is located as compared to such traffic during calendar year 2018.

K. The Commonwealth shall not authorize any cost recovery by an owner or operator subject to the provisions of this section for any fines or civil penalties resulting from violations of federal and state law or regulation.

§ 13.1-620. Special kinds of business.

A. If any corporation is to conduct the business of a bank or trust company, that shall be stated in the articles of incorporation and the corporation shall not have power to conduct other business except as may be related to or incidental to the banking or trust company business.

B. If any corporation is to conduct the business of an insurance company, that shall be stated in the articles of incorporation and the articles shall further set forth the class or classes of insurance the corporation proposes to undertake and the corporation shall not have power to conduct other business except as may be related to or incidental to the insurance business.

C. If any corporation is to conduct the business of a savings and loan association or savings bank, that shall be stated in the articles of incorporation and the corporation shall not have power to conduct other business except as may be related to or incidental to the stated business.

D. If any corporation is to conduct the business of a railroad or other public service company, that shall be stated in the articles of incorporation and a brief description of the business shall be included. Otherwise the corporation shall not have the power to conduct a public service business or to exercise any of the privileges of a public service company. No corporation shall be organized under this chapter for the purpose of conducting in this Commonwealth more than one kind of public service business except that the telephone and telegraph businesses or the water and sewer businesses may be combined, but this provision shall not limit the powers of domestic corporations existing on January 1, 1986. No corporation organized under this chapter to conduct the business of a public service company shall have

general business powers in this Commonwealth. Corporations organized under this chapter to conduct the business of a public service company may, however, conduct in this Commonwealth other public service business or nonpublic service business so far as may be related to or incidental to its stated business as a public service company and in any other state such business as may be authorized or permitted by the laws thereof. Nothing in this subsection shall limit the powers of such corporation in respect of the securities of other corporations or of limited liability companies.

E. If one or more of the purposes set forth in the articles of incorporation is to own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery or furnishing of heat, light, power or water, including heated or chilled water, or sewerage facilities, either directly or indirectly, to or for the public, the Commission shall not issue a certificate of incorporation unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company.

F. Whether or not classified elsewhere in the Code as public service companies the following are not required to incorporate as public service companies: a person authorized by the Federal Communications Commission to provide commercial mobile service, household goods carriers, petroleum tank truck carriers, bottled gas companies, taxicab companies, community television companies, charter party carriers, restricted parcel carriers, sight-seeing carriers, companies excluded from the definition of "public utility" by *subdivision 2 of the definition of such term in* § 56-265.1~~(b)(4)~~ or by § 56-1.2 and compressed natural gas filling stations.

G. A water or sewer company that proposes to serve more than ~~fifty~~ *50* customers shall incorporate as a public service company. A water or sewer company shall not serve more than ~~fifty~~ *50* customers unless its articles of incorporation state that the corporation is to conduct business as a public service company. The two preceding sentences shall not apply to a water or sewer company incorporated before and operating a water or sewer system on January 1, 1970; however, as to any water or sewer system serving more than ~~fifty~~ *50* customers, upon application to the Commission by a majority of the customers or by the company, a hearing may be held after ~~thirty~~ *30* days' notice to the company and the system's customers or a majority thereof, and the Commission may order such, if any, improvements or rate changes or both as are just and reasonable. Upon ordering into effect any rate changes or improvements found to be just and reasonable, the water or sewer system shall remain subject to the Commission's regulatory authority in the same manner as a public utility for such reasonable period as the Commission may direct. Nothing in this subsection shall apply to persons described in § 56-1.2.

§ 15.2-1901. Condemnation authority.

A. In addition to the authority granted to localities pursuant to any applicable charter provision or other provision of law, whenever a locality is authorized to acquire real or personal property or property interests for a public use, it may do so by exercise of the power of eminent domain, except as provided in subsection B.

B. A locality may acquire property or property interests outside its boundaries by exercise of the power of eminent domain only if such authority is expressly conferred by general law or special act. However, cities and towns shall have the right to acquire property outside their boundaries for the purposes set forth in § 15.2-2109 by exercise of the power of eminent domain. ~~The exercise of such condemnation authority by a city or town shall not be construed to exempt the municipality from the provisions of subsection F of § 56-580.~~

C. Notwithstanding any other provision of law, general or special, no locality shall condition or delay the timely consideration of any application for or grant of any permit or other approval for any real property over which it enjoys jurisdiction for the purpose, expressed or implied, of allowing the locality to condemn or otherwise acquire the property or to commence any process to consider whether to undertake condemnation or acquisition of the property.

§ 15.2-2232. Legal status of plan.

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility or an underground natural gas or underground electric distribution facility of a public utility as defined in ~~subdivision (b) of~~ § 56-265.1 within its certificated service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204. Following the adoption of the

Statewide Transportation Plan by the Commonwealth Transportation Board pursuant to § 33.2-353 and written notification to the affected local governments, each local government through which one or more of the designated corridors of statewide significance traverses, shall, at a minimum, note such corridor or corridors on the transportation plan map included in its comprehensive plan for information purposes at the next regular update of the transportation plan map. Prior to the next regular update of the transportation plan map, the local government shall acknowledge the existence of corridors of statewide significance within its boundaries.

B. The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within 60 days of a submission, unless the time is extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the governing body within 10 days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within 60 days from its filing. A majority vote of the governing body shall overrule the commission.

C. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless such work involves a change in location or extent of a street or public area.

D. Any public area, facility or use as set forth in subsection A which is identified within, but not the entire subject of, a submission under either § 15.2-2258 for subdivision or subdivision A 8 of § 15.2-2286 for development or both may be deemed a feature already shown on the adopted master plan, and, therefore, excepted from the requirement for submittal to and approval by the commission or the governing body; provided, that the governing body has by ordinance or resolution defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to § 15.2-2303.

E. Approval and funding of a public telecommunications facility on or before July 1, 2012, by the Virginia Public Broadcasting Board pursuant to Article 12 (§ 2.2-2426 et seq.) of Chapter 24 of Title 2.2 or after July 1, 2012, by the Board of Education pursuant to § 22.1-20.1 shall be deemed to satisfy the requirements of this section and local zoning ordinances with respect to such facility with the exception of television and radio towers and structures not necessary to house electronic apparatus. The exemption provided for in this subsection shall not apply to facilities existing or approved by the Virginia Public Telecommunications Board prior to July 1, 1990. The Board of Education shall notify the governing body of the locality in advance of any meeting where approval of any such facility shall be acted upon.

F. On any application for a telecommunications facility, the commission's decision shall comply with the requirements of the Federal Telecommunications Act of 1996. Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within 90 days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than 60 additional days. If the commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission.

G. A proposed telecommunications tower or a facility constructed by an entity organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 shall be deemed to be substantially in accord with the comprehensive plan and commission approval shall not be required if the proposed telecommunications tower or facility is located in a zoning district that allows such telecommunications towers or facilities by right.

H. A solar facility subject to subsection A shall be deemed to be substantially in accord with the comprehensive plan if (i) such proposed solar facility is located in a zoning district that allows such solar facilities by right or (ii) such proposed solar facility is designed to serve the electricity or thermal needs of the property upon which such facility is located~~, or will be owned or operated by an eligible customer-generator or eligible agricultural customer-generator under § 56-594 or by a small agricultural generator under § 56-594.2~~. All other solar facilities shall be reviewed for substantial accord with the comprehensive plan in accordance with this section. However, a locality may allow for a substantial accord review for such solar facilities to be advertised and approved concurrently in a public hearing process with a rezoning, special exception, or other approval process.

§ 15.2-2288.7. Local regulation of solar facilities.

A. An owner of a residential dwelling unit may install a solar facility on the roof of such dwelling to serve the electricity or thermal needs of that dwelling, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in

compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned residential shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as provided herein, any other solar facility proposed on property zoned residential, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

B. An owner of real property zoned agricultural may install a solar facility on the roof of a residential dwelling on such property, or on the roof of another building or structure on such property, to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned agricultural and to be operated under § ~~56-594~~ ~~or~~ ~~56-594.2~~ *56-641* shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as otherwise provided herein, any other solar facility proposed on property zoned agricultural, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

C. An owner of real property zoned commercial, industrial, or institutional may install a solar facility on the roof of one or more buildings located on such property to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned commercial, industrial, or institutional shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as otherwise provided herein, any other solar facility proposed on property zoned commercial, industrial, or institutional, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

D. An owner of real property zoned mixed-use may install a solar facility on the roof of one or more buildings located on such property to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned mixed-use shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as provided herein, any other solar facility proposed on property zoned mixed-use, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

E. Nothing in this section shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Virginia Condominium Act (§ 55.1-1900 et seq.), the declaration of a common interest community as defined in § 54.1-2345, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ 55.1-1800 et seq.).

F. A locality, by ordinance, may provide by-right authority for installation of solar facilities in any

zoning classification in addition to that provided in this section. A locality may also, by ordinance, require a property owner or an applicant for a permit pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) who removes solar panels to dispose of such panels in accordance with such ordinance in addition to other applicable laws and regulations affecting such disposal.

§ 15.2-2316.2. Localities may provide for transfer of development rights.

A. Pursuant to the provisions of this article, the governing body of any locality by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction. Any locality adopting or amending any such transfer of development rights ordinance shall give notice and hold a public hearing in accordance with § 15.2-2204 prior to approval by the governing body.

B. In order to implement the provisions of this act, a locality shall adopt an ordinance that shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property, to convey development rights to one or more parties, or to affix development rights to one or more receiving properties. These instruments shall be executed by the property owners of the development rights being transferred, and any lien holders of such property owners. The instruments shall identify the development rights being severed, and the sending properties or the receiving properties, as applicable;

2. Assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;

3. The severance of transferable development rights from the sending property;

4. The purchase, sale, exchange, or other conveyance of transferable development rights, after severance, and prior to the rights being affixed to a receiving property;

5. A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

6. A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties;

7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving properties;

8. The permitted uses and the maximum increases in density in the receiving area;

9. The minimum acreage of a sending property and the minimum reduction in density of the sending property that may be conveyed in severance or transfer of development rights;

10. The development rights permitted to be attached in the receiving areas shall be equal to or greater than the development rights permitted to be severed from the sending areas;

11. An assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans to provide necessary utility services within any designated receiving area; and

12. The application to be deemed approved upon the determination of compliance with the ordinance by the agent of the planning commission, or other agent designated by the locality.

C. In order to implement the provisions of this act, a locality may provide in its ordinance for:

1. The purchase of all or part of such development rights, which shall retire the development rights so purchased;

2. The severance of development rights from existing zoned or subdivided properties as otherwise provided in subsection E;

3. The owner of such development rights to make application to the locality for a real estate tax abatement for a period up to 25 years, to compensate the owner of such development rights for the fair market value of all or part of the development rights, which shall retire the number of development rights equal to the amount of the tax abatement, and such abatement is transferable with the property;

4. The owner of a property to request designation by the locality of the owner's property as a "sending property" or a "receiving property";

5. The allowance for residential density to be converted to bonus density on the receiving property by (i) an increase in the residential density on the receiving property or (ii) an increase in the square feet of commercial, industrial, or other uses on the receiving property, which upon conversion shall retire the development rights so converted;

6. The receiving areas to include such urban development areas or similarly defined areas in the locality established pursuant to § 15.2-2223.1;

7. The sending properties, subsequent to severance of development rights, to generate one or more forms of renewable energy, as defined in § ~~56-576~~ *56-1*, subject to the provisions of the local zoning ordinance;

8. The sending properties, subsequent to severance of development rights, to produce agricultural products or forestal products, as defined in § 15.2-4302, and to include parks, campgrounds and related

camping facilities; however, for purposes of this subdivision, "campgrounds" does not include use by travel trailers, motor homes, and similar vehicular type structures;

9. The review of an application by the planning commission to determine whether the application complies with the provisions of the ordinance;

10. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this act;

11. Approval of an application upon the determination of compliance with the ordinance by the agent of the planning commission; and

12. A requirement that development comply with any locality-adopted neighborhood design standards identified in the comprehensive plan for the receiving area in which the development shall occur, provided such design standard was adopted in the comprehensive plan and applied to the receiving area prior to the transfer of the development right.

D. The locality may, by ordinance, designate receiving areas or receiving properties, add to, supplement, or amend its designations of receiving areas or receiving properties, or designate receiving areas or receiving properties that shall receive development rights only from certain sending areas or sending properties specified by the locality, so long as the development rights permitted to be attached in the receiving areas are equal to or greater than the development rights permitted to be severed in the sending areas.

E. Any proposed severance or transfer of development rights shall only be initiated upon application by the property owners of the sending properties, development rights, or receiving properties as otherwise provided herein.

F. A locality may not require property owners to sever or transfer development rights as a condition of the development of any property.

G. The owner of a property may sever development rights from the sending property, pursuant to the provisions of this act. An application to transfer development rights to one or more receiving properties, for the purpose of affixing such rights thereto, shall only be initiated upon application by the owner of such development rights and the owners of the receiving properties.

H. Development rights severed pursuant to this article shall be interests in real property and shall be considered as such for purposes of conveyance and taxation. Once a deed for transferable development rights, created pursuant to this act, has been recorded in the land records of the office of the circuit court clerk for the locality to reflect the transferable development rights sold, conveyed, or otherwise transferred by the owner of the sending property, the development rights shall vest in the grantee and may be transferred by such grantee to a successor in interest. Nothing herein shall be construed to prevent the owner of the sending property from recording a deed covenant against the sending property severing the development rights on said property, with the owner of the sending property retaining ownership of the severed development rights. Any transfer of the development rights to a property in a receiving area shall be in accordance with the provisions of the ordinance adopted pursuant to this article.

I. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is severed from and recorded as a distinct interest in real property, or the transferable development right is used at a receiving property and becomes appurtenant thereto. Once a transferable development right is severed from the sending property, the assessment of the fee interest in the sending property shall reflect any change in the fair market value that results from the inability of the owner of the fee interest to use such property for such uses terminated by the severance of the transferable development right. Upon severance from the sending property and recordation as a distinct interest in real property, the transferable development right shall be assessed at its fair market value on a separate real estate tax bill sent to the owner of said development right as taxable real estate in accordance with Article 1 (§ 58.1-3200 et seq.) of Chapter 32 of Title 58.1. The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.

J. The owner of a sending property from which development rights are severed shall provide a copy of the instrument, showing the deed book and page number, or instrument or GPIN, to the real estate tax assessor for the locality.

K. Localities, from time to time as the locality designates sending and receiving areas, shall incorporate the map identified in subdivision B 6 into the comprehensive plan.

L. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or downzone the uses, or the density of uses permitted in the zoning district applicable to any property to which development rights have been transferred, shall be effective with respect to such property unless there has been mistake, fraud, or a material change in circumstances

substantially affecting the public health, safety, or welfare.

M. A county adopting an ordinance pursuant to this article may designate eligible receiving areas in any incorporated town within such county, if the governing body of the town has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.

N. Any county and an adjacent city may enter voluntarily into an agreement to permit the county to designate eligible receiving areas in the city if the governing body of the city has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The city council shall designate areas it deems suitable as receiving areas and shall designate the maximum increases in density in each such receiving area. However, if any such agreement contains any provision addressing any issue provided for in Chapter 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), or 41 (§ 15.2-4100 et seq.), the agreement shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et seq.). The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.

1. The terms and conditions of the density transfer agreement as provided in this subsection shall be determined by the affected localities and shall be approved by the governing body of each locality participating in the agreement, provided the governing body of each such locality first holds a public hearing, which shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality.

2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision to either affirming or denying the agreement and shall have no authority, without the express approval of each local governing body, to amend or change the terms or conditions of the agreement, but shall have the authority to validate the agreement and give it full force and effect. The circuit court shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.

3. The agreement shall not become binding on the localities until affirmed by the court under this subsection. Once approved by the circuit court, the agreement shall also bind future local governing bodies of the localities.

§ 15.2-5401. Intent of General Assembly.

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

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

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

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

§ 15.2-5402. Definitions.

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

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

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

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

"Electric distribution service" means distribution of electricity to a retail electric provider for use by retail customers in the Commonwealth and does not include (i) generation of electricity or (ii) sales of electricity to retail customers.

"Electric transmission and distribution utility" means any person that (i) provides electric distribution service and (ii) is a corporation, cooperative, municipal electric authority, or municipality.

"Electric transmission service" means the transmission of electricity, except to interconnect an electric generation facility to the transmission or distribution network, in the Commonwealth and does not include (i) generation of electricity or (ii) sales of electricity to retail customers.

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

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

"Retail electric provider" means a person that sells electricity to retail customers in the Commonwealth.

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

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

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

1. *To provide electric transmission or distribution service;*

2. To adopt bylaws or rules for the regulation of its affairs and the conduct of its business;

~~2.~~ *3.* To adopt an official seal and alter the same at pleasure;

~~3.~~ *4.* To maintain an office at such place or places as it may designate;

~~4.~~ *5.* To sue and be sued;

~~5.~~ *6.* To receive, administer and comply with the conditions and requirements respecting any gift,

grant or donation of any property or money;

~~6.~~ *7.* To study, plan, research, develop, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, lease, own, operate and maintain any project or any interest in any project, within or outside the Commonwealth, including the acquisition of an ownership interest in any project as a tenant in common with any other unit or units whether public or private, and to enter into and perform contracts with respect thereto, and if the authority acquires an ownership interest as a tenant in common in any project within the Commonwealth, the surrender or waiver by any such owner of its right to partition such property for a period not exceeding the period for which the property is used or useful for electric *transmission and distribution* utility purposes shall not be invalid and unenforceable by reason of length of such period or as unduly restricting the alienation of such property;

~~7.~~ *8.* To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property within or outside the Commonwealth, either individually or jointly with any other unit or units whether public or private~~; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, transportation, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; and to enter into agreements by private negotiation or otherwise, for such period as the authority shall determine, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water~~;

~~8.~~ *9.* To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

~~9.~~ *10.* To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

~~10.~~ *11.* To dispose of by private negotiated sale or lease or otherwise an existing project, a project under construction, or other property owned either individually or jointly~~, and to dispose of by private negotiated sale or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, transportation, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water~~;

~~11.~~ *12.* To borrow money and issue revenue bonds of the authority in the manner hereinafter provided;

~~12.~~ *13.* To accept advice and money from any member governmental unit of the authority;

~~13.~~ *14.* To apply and contract for and to expend assistance from the United States or other public or private sources, whether in form of a grant or loan or otherwise;

~~14.~~ *15.* To ~~fix,~~ charge and collect rents, rates, fees and charges for ~~output or capacity of any project and for the use of, or for, the other services, facilities and commodities sold, furnished or supplied through any project~~ *service rendered*;

~~15.~~ *16.* To authorize the acquisition, construction, operation or maintenance of ~~any project~~ *projects* by any unit or individual ~~on such terms as the authority shall deem proper,~~ and, in connection with any project which is owned jointly by the authority and one or more units, to act as agent, or designate one or more of the other units to act as agent, for all the owners of the project for the construction, operation or maintenance of such project;

~~16.~~ *17.* To ~~generate, produce, transmit, deliver, exchange, purchase or sell electric power and energy at wholesale or retail, and to~~ enter into contracts for any or all ~~such~~ purposes *related to the provision of electric transmission or distribution service*;

~~17.~~ *18.* To negotiate and enter into contracts ~~for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy at wholesale or retail~~ with any unit within or outside the Commonwealth *that are related to the provision of electric transmission or distribution service*;

~~18. To purchase power and energy and related services from any source on behalf of its member governmental units and other customers and to sell the same to its member governmental units and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the authority shall determine;~~

19. In the event of any annexation by a governmental unit which is not a member governmental unit of the authority of lands, areas, or territory in which the authority's projects exist, to continue to do business and to exercise jurisdiction over its properties and facilities in and upon or over such lands, areas or territory as long as any bonds remain outstanding or unpaid, or any contracts or other obligations remain in force;

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

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

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

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

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

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

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

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

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

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

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

~~3. Estimated useful life of such project;~~

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

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

~~Nothing herein contained shall prevent an authority from undertaking studies to determine whether there is a need for a project or whether such project is feasible.~~*Notwithstanding any other provision of this chapter, the electric service provided by an authority shall be limited to electric transmission and distribution service.*

§ 15.2-5406.1. Electric transmission and distribution service limited to certain authorities.

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

§ 15.2-5407. Membership in more than one authority.

Nothing herein contained shall prohibit any governmental unit from being a member of more than one authority for the purpose of ~~obtaining an~~ *providing* adequate electric ~~power supply~~ *transmission or distribution service*.

§ 15.2-5408. Furnishing of money, property or services by member governmental units.

~~Any member governmental unit of an authority may contract to buy from the authority power and energy required for its present or future requirements, including the capacity and output of one or more specified projects. Any such contract may provide that the governmental unit so contracting shall be obligated to make payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance by the authority or any other member governmental unit under the contract or any other instrument. Such contracts with respect to any project may also provide, in the event of default by any member governmental unit which is a party to any such contract for such project in the performance of its obligations thereunder, for other member governmental units which are parties to any such contract for such project to succeed to the rights and interests and assume the obligations of the defaulting party, pro rata or otherwise as may be agreed upon in such contracts.~~

~~Notwithstanding the provisions of any other law or local charter provision to the contrary, any such contracts with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding fifty years from the date a project is estimated to be placed in normal continuous operation; the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the Commonwealth or any agency, commission or instrumentality or political subdivision thereof except as specifically required and provided in this chapter.~~

~~Payments by a governmental unit under any contract for the purchase of capacity and output from an authority shall be made solely from, and may be secured by a pledge of and lien upon, the revenues derived by such governmental unit from the ownership and operation of the electric system of such governmental unit, and such payments may be made as an operating expense of such electric system. No obligation under such contract shall constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the governmental unit or upon any of its income, receipts or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the governmental unit are, or may be, pledged for the payment of any obligation under any such contract. A governmental unit shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on bonds of such governmental unit heretofore or hereafter issued for purposes related to its electric system. Any pledge made by a governmental unit pursuant to this paragraph shall be governed by the laws of the Commonwealth.~~

Any member governmental unit of an authority may furnish the authority with money and provide the authority with personnel, equipment and property, both real and personal. Any member governmental unit may also provide any services to an authority. Any member governmental unit may contract for, advance or contribute funds to an authority as may be agreed upon by the authority, and the member governmental unit and the authority shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the authority, together with interest thereon as may be agreed upon by the member governmental units and authority.

§ 15.2-5410. Contents of agreement as to joint ownership of project; designation of party to agreement as agent for construction, operation and maintenance of project; powers and duties of agent.

Any agreement between an authority and a unit with respect to the joint ownership of a project shall provide that each party to the agreement shall own a percentage of the project equal to the percentage of the money furnished or the value of property supplied by the respective parties for the acquisition and construction thereof and shall own and control a like percentage of the ~~output~~ *capacity* thereof. The agreement shall further provide that an authority shall be liable only for its own acts thereunder and that no moneys or other contributions supplied by an authority shall be applied in any way to the account of any other party to the agreement. Any such agreement may contain such terms, conditions, and provisions as the board of directors of an authority shall deem to be in the best interest of such authority.

The agreement may include, but shall not be limited to, provisions for the construction, operation and maintenance of a project by one of the parties thereto, which shall be designated in or pursuant to such agreement as agent on behalf of itself and the other parties, or by such other means as may be determined by the parties and provisions for a uniform method of determining, and allocating among the parties, costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such project. In carrying out its functions and activities as such agent with respect to the construction, operation, and maintenance of such a project, including without limitation the letting of

contracts therefor, the agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other parties. Notwithstanding the provisions of any other law to the contrary, the authority may delegate its powers and duties with respect to the construction, operation and maintenance of such project to such agent, and all actions taken by the agent in accordance with the provisions of such agreement shall be binding upon each of the parties without further action or approval by their respective boards of directors or governing bodies. The agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice.

As used in this section, "prudent utility practice" means any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

§ 15.2-5415. Security for bonds; trust agreement; bond resolution.

In the discretion of any authority, any revenue bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the authority and a corporate trustee. Such corporate trustee, and any depository of funds of the authority, may be any trust company or bank having the powers of a trust company within the Commonwealth. The resolution authorizing the issuance of the bonds or the trust agreement may pledge or assign all or a portion of the revenues to be received by the authority in respect of any project or projects but shall not convey or mortgage any project, may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

1. The pledge of all or any part of the revenues derived from the project or projects to be financed by the bonds or from the electric *transmission and distribution utility* system or facilities of the authority;

2. *The rates to be established by the Commission;*

3. The rents~~, rates,~~ fees, and charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants, and funds received or to be received by the authority;

~~3.~~ *4.* The setting aside of reserves and the investment, regulation, and disposition thereof;

~~4.~~ *5.* The custody, collection, securing, investment, and payment of any moneys held for the payment of bonds;

~~5.~~ *6.* Limitations or restrictions on the purposes to which the proceeds of the sale of bonds then or thereafter to be issued may be applied;

~~6.~~ *7.* Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, or the refunding of outstanding or other bonds;

~~7.~~ *8.* The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto, and the manner in which such consent may be given;

~~8.~~ *9.* Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this chapter shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

~~9.~~ *10.* The preparation and maintenance of a budget;

~~10.~~ *11.* The retention or employment of consulting engineers, independent auditors, and other technical consultants;

~~11.~~ *12.* Limitations on or the prohibition of free service to any person, firm, or corporation, public or private;

~~12.~~ *13.* The acquisition and disposal of property, and the appointment of a receiver of the funds and property of the authority in the event of a default;

~~13.~~ *14.* Provisions for insurance and for accounting reports and the inspection and audit thereof; and

~~14.~~ *15.* The continuing operation and maintenance of the project or projects.

Any pledge made by an authority pursuant to this chapter shall be governed by the laws of the Commonwealth.

§ 15.2-5416.1. Regulation by State Corporation Commission.

The electric transmission or distribution service of an authority shall be subject to the jurisdiction of the State Corporation Commission in the same manner and to the same extent as are electric transmission and distribution services provided by other persons under the laws of the Commonwealth.

§ 15.2-5418. Bondholders' and trustees' remedies.

Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be

restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder, or, to the extent permitted by law, under such trust agreement or resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the authority pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by such trust agreement or resolution to be performed by any authority or by any officer thereof, including the ~~fixing,~~ charging and collecting of rents, rates, fees and charges for the purchase of ~~output or~~ capacity *or service* of any project or for the use of or for the electric ~~power and energy or~~ *transmission or distribution* services furnished by any project.

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

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

§ 15.2-5425. Eminent domain.

An authority created under the provisions of this chapter is hereby vested with the power of eminent domain and the same authority to exercise the power of eminent domain as is granted in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and as is granted in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, subject to the provisions of § 25.1-102~~, provided that this power shall not be used to acquire existing power supply facilities or plants held for future use~~. Furthermore, no authority may condemn property outside of the territorial limits of its member governmental units without obtaining the consent of the governing body of the locality in which such property is located; however, in any case in which the approval by such locality is withheld, the authority seeking such approval may petition for the convening of a special court, pursuant to §§ 15.2-2135 through 15.2-2141.

§ 15.2-5431. Provisions of chapter controlling over other statutes and charters.

Any provision of this chapter which is found to be in conflict with any other statute or charter, *except provisions of Title 56 applicable to electric transmission or distribution service,* shall be controlling and shall supersede such other statute or charter to the extent of such conflict.

CHAPTER 31.

COMMISSION ON ~~ELECTRIC UTILITY REGULATION~~ *ENERGY REFORM*.

§ 30-201. (Expires July 1, 2020) Commission on Energy Reform; purpose.

The Commission on Electric Utility Restructuring established pursuant to Chapter 885 of the Acts of Assembly of 2003, ~~is~~ *and* continued, effective July 1, 2008, as the Commission on Electric Utility Regulation*, is continued, effective July 1, 2020, as the Commission on Energy Reform* (the Commission) within the legislative branch of state government. The purpose of the Commission is to monitor the State Corporation Commission's implementation of the Virginia ~~Electric Utility Regulation~~ *Energy Reform* Act (§ ~~56-576~~ *56-614* et seq.).

§ 30-202. (Expires July 1, 2020) Membership; terms.

The Commission shall consist of 10 legislative members. Members shall be appointed as follows: four members of the Senate to be appointed by the Senate Committee on Rules and six members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates.

Members of the Commission shall serve terms coincident with their terms of office. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

The Commission shall elect a chairman and vice-chairman from among its membership. The chairman of the Commission shall be authorized to designate one or more members of the Commission

to observe and participate in the discussions of any work group convened by the State Corporation Commission in furtherance of its duties under the Virginia ~~Electric~~ ~~Utility~~ ~~Regulation~~ *Energy Reform* Act (§ ~~56-576~~ *56-614* et seq.) and this chapter. Members participating in such discussions shall be entitled to compensation and reimbursement provided in § 30-204, if approved by the Joint Rules Committee or its Budget Oversight Subcommittee.

§ 30-205. (Expires July 1, 2020) Powers and duties of the Commission.

The Commission shall have the following powers and duties:

1. Monitor the work of the State Corporation Commission in implementing Chapter ~~23~~ *29* (§ ~~56-576~~ *56-614* et seq.) of Title 56, receiving such reports as the Commission may be required to make pursuant thereto, including reviews, analyses, and impact on consumers of electric utility regulation in other states;

2. Examine generation, transmission and distribution systems reliability concerns;

3. Establish one or more subcommittees, composed of its membership, persons with expertise in the matters under consideration by the Commission, or both, to meet at the direction of the chairman of the Commission, for any purpose within the scope of the duties prescribed to the Commission by this section, provided that such persons who are not members of the Commission shall serve without compensation but shall be entitled to be reimbursed from funds appropriated or otherwise available to the Commission for reasonable and necessary expenses incurred in the performance of their duties; and

4. Report annually to the General Assembly and the Governor with such recommendations as may be appropriate for legislative and administrative consideration in order to maintain reliable service in the Commonwealth while preserving the Commonwealth's position as a low-cost electricity market.

§ 30-209. (Expires July 1, 2020) Sunset.

This chapter shall expire on July 1, ~~2020~~ *2022*.

§ 33.2-272. Location of landfill gas pipelines in highway right-of-way; Department of Transportation to provide notice to counties.

Whenever the Department grants its permission for the construction, installation, location, or placement of a landfill gas pipeline within any highway right-of-way, notice shall be provided by the Department to every county through which such pipeline or any portion thereof will pass.

For the purposes of this section, "landfill gas pipeline" means those facilities exempted from the definition of public utility in subdivisions ~~(b)(6),~~ ~~(7)~~ *4, 5,* and ~~(8)~~ ~~of~~ *6 of such definition in* § 56-265.1.

§ 45.1-399. (Expires July 1, 2022) Low-to-Moderate Income Solar Loan and Rebate Pilot Program.

A. The Board, with the approval of the Director, shall develop and establish a Low-to-Moderate Income Solar Loan and Rebate Pilot Program (the Program) and rules for the loan or rebate application process. The Program shall be open to any Virginia resident whose household income is at or below 80 percent of the state median income or regional median income, whichever is greater. The Program shall allow only one loan per residence, irrespective of the ownership of the solar energy system that is installed. Such loan shall be available only for a solar installation or energy efficiency improvements pursuant to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36.

B. The Board shall accept an application only from the installer of the solar installation or the agent of the customer.

Each application shall include (i) 12 months of the customer's utility bills prior to installation of the solar energy system and an agreement to provide 12 months of utility bills to the Board following the installation; (ii) the customer's permission for the Director to (a) create a customer profile for the customer if he becomes an eligible loan or rebate customer, (b) aggregate the data provided by such eligible loan or rebate customers, and (c) use such aggregate data for the purpose of lowering energy costs and implementing effective programs; (iii) evidence of the completion of a home performance audit, conducted by a qualified local weatherization service provider, before and after installation of energy efficiency services such as lighting or insulation improvements, attic tents, weatherization, air sealing of openings in the building envelope, sealing of ducts, or thermostat upgrades, to demonstrate that such energy efficiency services were completed and resulted in a reduction in consumption of at least 12 percent; and (iv) an affidavit attesting to the receipt of a public benefit at the time the solar energy system is to be installed.

C. The Board shall review each application submitted to it on a first-come, first-served basis and shall recommend to the Director the approval or denial of each such application within 30 days of receipt. If the Director approves an application, he shall hold a reservation of funds for as long as 180 days for final loan or rebate claim and disbursement.

D. A customer whose application is approved may install an energy system that is interconnected pursuant to the provisions of ~~§ 56-594~~ ~~or~~ any ~~section~~ ~~in~~ ~~Title~~ ~~56~~ ~~that~~ ~~addresses~~ net energy metering ~~provisions~~ *program* for electric cooperative service territories.

E. All of the work of installing the energy system shall be completed by a licensed contractor that (i) possesses an Alternative Energy System (AES) Contracting specialty as defined by the Board for

Contractors pursuant to the provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1; (ii) possesses certification for solar installation from the North American Board of Certified Energy Practitioners, Solar Energy International, Roof Integrated Solar Energy, or a similar installer certification program; (iii) possesses a rating of "A" or higher from the local Better Business Bureau; and (iv) has installed a minimum of 150 net-metered residential solar systems in Virginia. If the work of installing the solar energy system requires electrical work, it shall be completed by an electrical contractor licensed by the Virginia Department of Professional and Occupational Regulation. All photovoltaic panels, inverters, and other electrical apparatus used in the solar energy system shall be tested and certified by a federal Occupational Safety and Health Administration Nationally Recognized Testing Laboratory such as UL LLC and installed in compliance with manufacturer specifications and all applicable building and electrical codes.

F. The customer or the installer, acting on behalf of the customer, shall submit any loan or rebate claim within 90 days of completion of the installation of the solar energy system, with completion deemed to have occurred once the solar energy system's bi-directional meter or net meter, or the respective utility's revenue grade meter, has been installed and the system has been electrified. Each rebate claim shall include, at a minimum, a date of system electrification and a time-stamped and date-stamped verification of (i) bi-directional net meter delivery or (ii) the operation of a compatible programmed smart meter capable of tracking net metering activity.

G. The Director shall review and approve or deny a loan or rebate claim within 60 days of receipt and shall provide a written explanation of each denial to the respective claimant. The Director shall disburse from the Low-to-Moderate Income Solar Loan and Rebate Fund created pursuant to § 45.1-398 the loan or rebate for each approved claim within 60 days of its receipt of the claim and according to the order in which its respective application was approved. Any rebate or grant shall be in the amount of no more than $2 per DC watt for up to six kilowatts of solar capacity installed. The customer may use a rebate in addition to any federal tax credits or state incentives or enhancements earned for the same solar installation.

§ 56-1. Definitions.

Whenever used in this title, unless the context requires a different meaning:

"Broadband connection," for purposes of this section, means a connection where transmission speeds exceed 200 kilobits per second in at least one direction.

"Commission" means the State Corporation Commission.

"Corporation" or "company" includes all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of ~~this~~ *the* Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth, *except as otherwise provided in the definition of "public service corporation" or "public service company" in this section.*

"Electric vehicle charging service" means the replenishment of the battery of a plug-in electric motor vehicle, which replenishment occurs by plugging the motor vehicle into an electric power source in order to charge or recharge its battery.

"Electric distribution service" means the distribution of electricity to a retail electric provider for use by retail customers in the Commonwealth. "Electric distribution service" does not include (i) generation of electricity or (ii) sales of electricity to retail customers.

"Electric transmission and distribution utility" means any person that (i) provides electric distribution service and (ii) is a corporation, cooperative, municipal electric authority, or municipality.

"Electric transmission service" means the transmission of electricity, except to interconnect an electric generation facility to the transmission or distribution network, in the Commonwealth. "Electric transmission service" does not include (i) generation of electricity or (ii) sales of electricity to retail customers.

"Interexchange telephone service" means telephone service between points in two or more exchanges that is not classified as local exchange telephone service. "Interexchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Local exchange telephone service" means telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at specified rates and charges. "Local exchange telephone service" shall not include Voice-over-Internet protocol service

for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Mail" includes electronic mail and other forms of electronic communication when the customer has requested or authorized electronic bill delivery or other electronic communications.

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

"Person" includes individuals, partnerships, limited liability companies, and corporations.

"Plug-in electric motor vehicle" means an on-road motor vehicle that draws propulsion using a traction battery that has at least four kilowatt hours of capacity, uses an external source of electric energy to charge or recharge the battery, has a gross vehicle weight of not more than 14,000 pounds, and meets any applicable emissions standards.

"Public service corporation" or "public service company" includes gas, pipeline, electric ~~light, heat, power~~ *transmission and distribution utility,* and water supply companies, sewer companies, telephone companies, and all persons authorized to transport passengers or property as a common carrier. "Public service corporation" or "public service company" shall not include ~~(i)~~ a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth *unless the entity is an electric transmission and distribution utility*; however, if such an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service corporation or public service company and subject to the authority of the Commission with respect only to its provision of the services it is authorized to provide pursuant to such certificate~~; or (ii) any company described in subdivision (b)(10) of § 56-265.1~~.

"Railroad" includes all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

"Railroad company" includes any company, trustee or other person owning, leasing or operating a railroad.

"Rate" means rate charged for any service rendered or to be rendered.

"Rate," "charge" and "regulation" include joint rates, joint charges and joint regulations, respectively.

"Regulated operating revenue" includes only revenue from services not found to be competitive.

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, waste landfill gas, municipal solid waste, wave motion, tides, or geothermal power. "Renewable energy" does not include energy derived from coal, oil, natural gas, or nuclear power. "Renewable energy" also includes the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

"Retail electric provider" means a person that sells electricity to retail customers in the Commonwealth.

"Transportation company" includes any railroad company, any company transporting express by railroad, and any ship or boat company.

"Virginia limited liability company" has the same meaning ascribed to "limited liability company" in § 13.1-1002. A foreign limited liability company, as that term is defined in § 13.1-1002, may become a Virginia limited liability company, even though also being a limited liability company organized under laws other than the laws of the Commonwealth, by filing articles of organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include (i) the name of the foreign limited liability company immediately prior to the filing of the articles of organization; (ii) the date on which and the jurisdiction in which the foreign limited liability company was first formed, organized, created or otherwise came into being; and (iii) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the foreign limited liability company, or any equivalent thereto under applicable law, immediately prior to the filing of the articles of organization. With respect to a foreign limited liability company that is also organized as a Virginia limited liability company, the terms and conditions of its organization as a Virginia limited liability company shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the foreign limited liability company in the conduct of its business or by applicable law other than the law of the Commonwealth, as appropriate.

"Voice-over-Internet protocol service" or "VoIP service" means any service that: (i) enables real-time, two-way voice communications that originate or terminate from the user's location using Internet protocol or any successor protocol and (ii) uses a broadband connection from the user's location. This definition includes any such service that permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

§ 56-1.2. Persons, localities, and school boards not designated as public utility, public service corporation, etc.

The terms public utility, public service corporation, or public service company, as used in Chapters 1

(§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) ~~of this title~~, shall not refer to:

1. Any person who owns or operates property and provides ~~electricity,~~ natural gas, water, or sewer service to residents or tenants on the property, provided that (i) the ~~electricity,~~ natural gas, water, or sewer service provided to the residents or tenants is purchased by the person from a public utility, public service corporation, public service company, or person licensed by the Commission as a competitive provider of energy services, or a county, city or town, or other publicly regulated political subdivision or public body, (ii) the person or his agent charges to the resident or tenant on the property only that portion of the person's utility charges for the ~~electricity,~~ natural gas, water, or sewer service which is attributable to usage by the resident or tenant on the property, and additional service charges permitted by § 55.1-1212 or 55.1-1404, as applicable, and (iii) the person maintains three years' billing records for such charges.

2. Any (i) person who is not a public service corporation and who provides electric vehicle charging service at retail, (ii) school board that operates retail fee-based electric vehicle charging stations on school property pursuant to § 22.1-131, (iii) locality that operates a retail fee-based electric vehicle charging station on property owned or leased by the locality pursuant to § 15.2-967.2, or (iv) board of visitors of any baccalaureate public institution of higher education that operates a retail fee-based electric vehicle charging station on the grounds of such institution pursuant to § 23.1-1301.1. The ownership or operation of a facility at which electric vehicle charging service is sold, and the selling of electric vehicle charging service from that facility, does not render such person, school board, locality, or board of visitors a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

3. The Department of Conservation and Recreation when operating a retail fee-based electric vehicle charging station on property of any existing state park or similar recreational facility the Department controls pursuant to § 10.1-104.01. The ownership or operation of a facility at which electric vehicle charging service is sold, or the selling of electric vehicle charging service from that facility, does not render the Department of Conservation and Recreation a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

4. The Chancellor of the Virginia Community College System when operating a retail fee-based electric vehicle charging station on the grounds of any comprehensive community college pursuant to § 23.1-2908.1. The ownership or operation of a facility at which electric vehicle charging service is sold, or the selling of electric vehicle charging service from that facility, does not render the Chancellor of the Virginia Community College System a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

5. The Department of General Services, Department of Motor Vehicles, or Department of Transportation when operating a retail fee-based electric vehicle charging station on any property or facility that such agency controls. The ownership or operation of a facility at which electric vehicle charging service is sold, or the selling of electric vehicle charging service from that facility, does not render the agency a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

6. Any person that is not a public service corporation and that sells electric energy generated from an onsite distributed electric generation facility to a customer pursuant to a third-party power purchase agreement or distributed electric generation lease agreement. The ownership or operation of such an onsite distributed electric generation facility from which electric energy is sold to a customer pursuant to a third-party power purchase agreement or distributed electric generation lease agreement, and the selling of electric energy to such a customer from that distributed electric generation facility, does not render the person a public utility, public service corporation, public service company, or electric utility as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale of electric energy or its ownership or operation of such a distributed electric generation facility.

§ 56-16.1. Telephone, telegraph or electric power lines crossing railroads.

A. If a telephone~~,~~ *or* telegraph *company,* or electric ~~power company~~ *transmission and distribution utility* desires to cross the works of a railroad company and the parties thereto cannot agree on the manner of the crossing or the compensation to be paid or the damages, if any, occasioned by such crossing, then either party may proceed under this section in such case. Such party, after complying with the provisions of §§ 56-17 and 56-18, insofar as they are applicable, may apply to the Commission within ~~thirty~~ *30* days after the submission of the plans and specifications required in § 56-18, to inquire

into the necessity for such crossing, the propriety of the proposed location, all matters pertaining to its construction and operation, and the crossing fee and damages, if any, to be paid to such railroad.

B. Every such application shall, in addition to the plans and specifications required in § 56-18, set forth (i) the means applicant proposes to employ to protect persons and property on the premises of the railroad; (ii) the extent to which applicant will safeguard the railroad from damage or destruction of persons or property resulting from such crossing including a provision to save the railroad harmless from claims arising as a result of such crossing; (iii) the conditions under which usage of the crossing will terminate and all interests revert to the railroad; and (iv) the means which applicant proposes to employ to prevent interference with the unlimited use of the property by the railroad including, but without limitation, the communication and transportation system on the property proposed to be crossed. The Commission may, at its discretion, require the applicant to provide a bond or insurance conditioned to save the railroad harmless from claims arising as a result of such crossing. The Commission may, as provided in § 56-19, employ experts to advise it with reference to such application.

C. If the Commission grants such application in whole or in part, the order of the Commission shall grant a license for such crossing upon compliance with the terms of the order, and shall fix a fee for such crossing and determine the damages, if any; in fixing the amount of such fees the Commission shall consider the costs involved to the company to be crossed and the periodic inspection of such works.

D. Construction shall not begin until permitted under an order provided for in paragraph C hereof unless the parties agree thereto; provided that the Commission may allow construction to proceed pending the determination of the fee and damages, if any.

§ 56-41.1. Rates and charges for use of poles by telephone cooperatives, mutual telephone associations and small investor-owned telephone utilities.

A. The General Assembly has determined that the joint use of poles by electric ~~light, heat and power companies~~ *transmission and distribution utilities*, telephone cooperatives, mutual telephone associations, and small investor-owned telephone utilities is in the public interest and should be encouraged to the maximum extent possible.

B. The terms and rates for the joint use of poles by electric ~~light, heat and power companies~~ *transmission and distribution utilities*, telephone cooperatives, mutual telephone associations, and small investor-owned telephone utilities shall be by agreement between the parties. In the event that the terms and rates cannot be agreed upon by the interested parties, it shall be the duty of the Commission to determine and establish such terms and the rates to be paid for joint use.

§ 56-46.1. Commission to consider environmental, economic and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. 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 granted 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. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth, including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

B. Subject to the provisions of subsection ~~J~~ *I*, no electrical transmission line of 138 kilovolts or more

shall be constructed unless the State Corporation Commission shall, after at least 30 days' advance notice by ~~(i)~~ *(1)* publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, ~~(ii)~~ *(2)* written notice to the governing body of each such county and municipality, and ~~(iii)~~ *(3)* causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route including a digital geographic information system (GIS) map provided by the public utility showing the location of the proposed route. The Commission shall make GIS maps provided under this subsection available to the public on the Commission's website. Such notices shall be in addition to the advance notice to the chief administrative officer of the county or municipality required pursuant to § 15.2-2202. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned. To assist the Commission in this determination, as part of the application for Commission approval of the line, the applicant shall summarize its efforts to reasonably minimize adverse impact on the scenic assets, historic districts, and environment of the area concerned. In making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation. If the local comprehensive plan of an affected county or municipality designates corridors or routes for electric transmission lines and the line is proposed to be constructed outside such corridors or routes, in any hearing the county or municipality may provide adequate evidence that the existing planned corridors or routes designated in the plan can adequately serve the needs of the company. Additionally, the Commission shall consider, upon the request of the governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the underground placement of the line and (b) any potential impediments to timely construction of the line.

C. If, prior to such approval, any interested party shall request a public hearing, the Commission shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as may be designated by the Commission. In any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

If, prior to such approval, written requests therefor are received from the governing body of any county or municipality through which the line is proposed to be built or from 20 or more interested parties, the Commission shall hold at least one hearing in the area that would be affected by construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made available for public inspection at a convenient location in the area for a reasonable time before such local hearing.

D. As used in this section, unless the context requires a different meaning:

"Environment" or "environmental" shall be deemed to include in meaning "historic," as well as a consideration of the probable effects of the line on the health and safety of the persons in the area concerned.

"Interested parties" shall include the governing bodies of any counties or municipalities through which the line is proposed to be built, and persons residing or owning property in each such county or municipality.

"Public utility" means a public utility as defined in § 56-265.1.

"Qualifying facilities" means a cogeneration or small power production facility which meets the criteria of 18 C.F.R. Part 292.

"Reasonably accommodate requests to wheel or transmit power" means:

1. That the applicant will make available to new electric generation facilities constructed after January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total megawatts of the additional transmission capacity created by the proposed line, for the purpose of wheeling to public utility purchasers the power generated by such qualifying facilities and other nonutility facilities which are awarded a power purchase contract by a public utility purchaser in compliance with applicable state law or regulations governing bidding or capacity acquisition programs for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant will extend only to those requests for wheeling service made within the 12 months following certification by the State Corporation Commission of the transmission line and with effective dates for commencement of such service within the 12 months following completion of the transmission line; and

2. That the wheeling service offered by the applicant, pursuant to subdivision D 1, will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L. 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line, the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include in its agreements for such wheeling service.

E. In the event that, at any time after the giving of the notice required in subsection B, it appears to the Commission that consideration of a route or routes significantly different from the route described in the notice is desirable, the Commission shall cause notice of the new route or routes to be published and mailed in accordance with subsection B. The Commission shall thereafter comply with the provisions of this section with respect to the new route or routes to the full extent necessary to give affected localities and interested parties in the newly affected areas the same protection afforded to affected localities and interested parties affected by the route described in the original notice.

F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances with respect to such transmission line.

G. The Commission shall enter into a memorandum of agreement with the Department of Environmental Quality regarding the coordination of their reviews of the environmental impact of electric generating plants and associated facilities.

H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from the Commission for any electric generating facility, electric transmission line, natural or manufactured gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility that is subject to issuance by any agency or board within the Secretariat of Natural Resources, may request a pre-application planning and review process. In any such request to the Commission or the Secretariat of Natural Resources, the applicant shall identify the proposed energy facility for which it requests the pre-application planning and review process. The Commission, the Department of Environmental Quality, the Marine Resources Commission, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Conservation and Recreation, and other appropriate agencies of the Commonwealth shall participate in the pre-application planning and review process. Participation in such process shall not limit the authority otherwise provided by law to the Commission or other agencies or boards of the Commonwealth. The Commission and other participating agencies of the Commonwealth may invite federal and local governmental entities charged by law with responsibility for issuing permits or approvals to participate in the pre-application planning and review process. Through the pre-application planning and review process, the applicant, the Commission, and other agencies and boards shall identify the potential impacts and approvals that may be required and shall develop a plan that will provide for an efficient and coordinated review of the proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely to be required based on the information available, (b) a specific plan and preliminary schedule for the different reviews, (c) a plan for coordinating those reviews and the related public comment process, and (d) designation of points of contact, either within each agency or for the Commonwealth as a whole, to facilitate this coordination. The plan shall be made readily available to the public and shall be maintained on a dedicated website to provide current information on the status of each component of the plan and each approval process including opportunities for public comment.

~~I. The provisions of this section shall not apply to the construction and operation of a small renewable energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1.~~

~~J.~~ *I.* Approval under this section shall not be required for any transmission line for which a certificate of public convenience and necessity is not required pursuant to ~~subdivision A~~ *subsection B* of § 56-265.2.

§ 56-49. Powers.

In addition to the powers conferred by Title 13.1, each public service corporation of this Commonwealth organized to conduct a public service business other than a railroad shall have the power:

1. To cause to be made such examinations and surveys for its proposed line or location of its works as are necessary to the selection of the most advantageous location or route or for the improvement or straightening of its line or works, or changes of location or construction, or providing additional facilities, and for such purposes, by its officers and servants, to enter upon the lands or waters of any person but subject to responsibility for all damages that are done thereto, and subject to permission from, or notice to, the landowner as provided in § 25.1-203.

2. To acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in

lands, including lands under water and riparian rights, of any person, which are deemed necessary for the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works, and for all its necessary business purposes incidental thereto, for its use in serving the public either directly or indirectly through another public service corporation, including permanent, temporary, continuous, periodical or future use, whenever the corporation cannot agree on the terms of purchase or settlement with any such person because of the incapacity of such person or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because any such person cannot with reasonable diligence be found or is unknown, or is a nonresident of the Commonwealth, or is unable to convey valid title to such property. Such proceeding shall be conducted in the manner provided by Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and shall be subject to the provisions of § 25.1-102. However, the corporation shall not take by condemnation proceedings a strip of land for a right-of-way within 60 feet of the dwelling house of any person except (i) when the court having jurisdiction of the condemnation proceeding finds, after notice of motion to be granted authority to do so to the owner of such dwelling house, given in the manner provided in §§ 25.1-209, 25.1-210, and 25.1-212, and a hearing thereon, that it would otherwise be impractical, without unreasonable expense, to construct the proposed works of the corporation at another location; (ii) in case of occupancy of the streets or alleys, public or private, of any county, city or town, in pursuance of permission obtained from the board of supervisors of such county or the corporate authorities of such city or town; or (iii) in case of occupancy of the highways of this Commonwealth or of any county, in pursuance of permission from the authorities having jurisdiction over such highways. A public service corporation which has not been (i) allotted territory for public utility service by the State Corporation Commission or (ii) issued a certificate to provide public utility service shall acquire lands or interests therein by eminent domain as provided in this subdivision for lines, facilities, works or purposes only after it has obtained any certificate of public convenience and necessity required for such lines, facilities, works or purposes under Chapter 10.1 (§ 56-265.1 et seq.) ~~of this title~~.

And provided, further, that notwithstanding the foregoing nor any other provision of the law the right of eminent domain shall not be exercised for the purpose of acquiring any lands or estates or interests therein nor any other property for the construction, reconstruction, maintenance or operation of any pipeline for the transportation of coal.

For the purposes of this section, the words "public service corporation" shall include any Virginia limited liability company as defined in § 56-1 that has been issued a certificate of public convenience and necessity authorizing it to furnish telecommunications services of a public utility ~~set forth in subdivision (b) of~~ *as defined in* § 56-265.1 and that seeks to construct or acquire facilities for use in providing the certificated telecommunications service.

§ 56-88. Definitions.

~~In~~ *As used in* this chapter, the following terms shall have the following meanings:

"Acquire" or "acquisition" includes any purchase or other acquisition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Company" means a corporation, a partnership, an association, a joint-stock company, a business trust or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or county.

"Dispose of" or "disposition" includes any sale or other disposition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Public utility" means any company which owns or operates facilities within the Commonwealth for ~~the generation,~~ *electric* transmission or *electric* distribution ~~of electric energy for sale~~ *service*; for the production, transmission or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for heat, light or power, but excluding any company described in subdivision ~~(b)(8) or (b)(10)~~ *6* of *the definition of public utility in* § 56-265.1; or for the furnishing of sewerage facilities or water.

"Utility assets" means the facilities in place of any public utility or municipality for ~~the production,~~ *(i) electric* transmission or *electric* distribution ~~of electric energy or~~ *service, (ii) production or distribution of* natural or manufactured gas, or ~~for~~ *(iii)* the furnishing of sewerage facilities or water.

"Utility security" means any note, draft, debenture, bond, share of stock, certificate, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, receiver's or trustee's certificate or any other instrument or interest commonly known as a security which is issued, assumed or guaranteed by any public utility or any company which would be a public utility if the facilities owned or operated by it were within the Commonwealth, or any company substantially engaged in the ownership of any of the aforesaid securities or in supplying management or advice to any of the aforesaid companies; or any certificate of deposit for, voting trust certificate for, certificate of

interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase or acquire, any of the aforesaid securities.

§ 56-231.15. Definitions.

~~The following terms, whenever used or referred to~~ *As used* in this article, ~~shall have the following meanings,~~ unless ~~a different meaning clearly appears from~~ the context *requires otherwise*:

"Acquire" means and includes construct, or acquire by purchase, lease, devise, gift or the exercise of the power of eminent domain, or by other mode of acquisition.

"Affiliate" means a separate affiliated or subsidiary corporation or other separate legal entity.

"Board" means the board of directors of a cooperative formed under or subject to this article.

~~"Commission" means the State Corporation Commission of Virginia.~~

"Cooperative" means a utility consumer services cooperative formed under or subject to this article or a distribution cooperative formed under the former Distribution Cooperatives Act (§ 56-209 et seq.).

~~"Energy" means and includes any and all forms of energy no matter how or where generated or produced.~~

"Federal agency" means and includes the United States of America, the President of the United States of America, the Tennessee Valley Authority, the Federal Administrator of the Rural Utility Service, the Southeastern Power Administration, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Federal Communications Commission, and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

~~"HVACR" means heating, ventilation, air conditioning and refrigeration.~~

"Improve" means and includes construct, reconstruct, replace, extend, enlarge, alter, better, or repair.

"Law" means any act or statute, general, special or local, of ~~this~~ *the* Commonwealth.

"Member" means and includes each natural person signing the articles of incorporation of a cooperative and each person admitted to membership therein pursuant to law or its bylaws.

"Municipality" means any city or incorporated town of the Commonwealth.

"Obligations" means and includes bonds, interim certificates or receipts, notes, debentures, and all other evidences of indebtedness either issued by, or the payment of which is assumed or contractually undertaken by, a cooperative.

"Patronage capital" includes all amounts received by a cooperative from sales of electric ~~power or electric~~ distribution services~~, or both,~~ *to a retail electric provider for services* to members in excess of the cooperative's cost of furnishing electric ~~power or~~ distribution services~~, or both,~~ *to a retail electric provider for services* to members and such other margins as determined by the board of directors.

"Person" means and includes natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.

"Propane or fuel oil equipment" means equipment and related systems to store or use propane or fuel oil products.

"Regulated utility services" means utility services that are subject to regulation as to rates or service by the Commission.

"System" means and includes any plant, works, system, facilities, equipment or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with ~~the generation, production, transmission or distribution of energy~~ *electric distribution service* or in connection with other utility services *authorized by this article*.

~~"Traditional cooperative activity" means any business, service or activity in which cooperatives in Virginia have traditionally engaged and that is incidental to and substantially related to the electric utility business conducted by a cooperative on or before July 1, 1999, provided that traditional cooperative activity does not include any program to (i) buy or maintain an inventory of HVACR equipment or household appliances; (ii) install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service; (iii) sell HVACR equipment or household appliances to customers metered and billed on residential rates; (iv) sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing other traditional cooperative activities; (v) sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale; or (vi) serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are other traditional cooperative activities.~~

"Utility services" means any products, services and equipment related to ~~energy~~ *electric distribution*, telecommunications, water and sewerage.

§ 56-231.16. Organization; purpose.

A. Any number of natural persons not less than five may, by executing, filing and recording articles

of incorporation as hereinafter set forth, form a cooperative, either with or without capital stock, not organized for pecuniary profit, for the ~~principal~~ purpose of making ~~energy,~~ ~~energy~~ ~~services,~~ *electric distribution, telecommunications, water, sewerage,* and other utility services available at the lowest cost consistent with sound economy and prudent management of the business of such cooperative ~~and such other purposes as its membership shall approve: (i) provided, however, that within its certificated service territory, no such cooperative shall, prior to July 1, 2000, undertake or initiate any new program (a) to buy or maintain an inventory of HVACR equipment or household appliances, (b) to install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service, (c) to sell HVACR equipment or household appliances to customers metered and billed on residential rates, (d) to sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing traditional cooperative activities, (e) to sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale, or (f) to serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such cooperative may engage within its certificated service territory in any of the activities enumerated in clause (i) that (a) have received State Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated public service company or its unregulated affiliate within such cooperative's certificated service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within the certificated service territory of another public service company unless such activities are undertaken by such public service company or its unregulated affiliate within such cooperative's certificated service territory~~. In addition, such cooperative may establish one or more subsidiaries to engage in any other business activities not prohibited by law; notwithstanding the foregoing, no such subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in under this section. For purposes of determining whether a cooperative is formed not for pecuniary profit, the establishment of one or more affiliates thereof on a for-profit basis shall not disqualify such entity from being formed as a cooperative pursuant to this article.

B. Nothing in this article shall be construed to authorize a cooperative formed pursuant to this article, or any affiliate thereof, to engage, on a not-for-profit basis, within either the cooperative's certificated service territory or in the certificated service territory of another public service company, in the sale of products, the provision of services, or other business activity, except for regulated electric ~~utility~~ *distribution* services~~, unregulated sales of electric power to its members within its certificated service territory, and traditional cooperative activities~~. However, if such products or services are not currently provided by any person other than a cooperative formed under or subject to this chapter or its affiliate and the Commission determines that no such other person is likely, within a reasonable time, to effectively provide such products and services in such territory, an affiliate of a cooperative may provide such products or services on a not-for-profit basis. The Commission shall also permit an affiliate of a cooperative formed under or subject to this chapter to provide such products or services on a not-for-profit basis upon a finding that the affiliate will not receive the benefit of any federal income tax exemption that is not available to persons other than cooperatives and will not receive the benefit of any federally guaranteed or subsidized financing that is not available to persons other than cooperatives; and provided further that nothing in this subsection shall prohibit the continued operation of any business activities of any not-for-profit cooperative or affiliate formed, operating, and actively providing products or services to customers on or before July 1, 1999.

C. Notwithstanding any other provision of this article, the only electric service that a cooperative formed pursuant to this article may provide is electric distribution service within the cooperative's certificated service territory.

§ 56-231.23. General powers granted.

Each cooperative formed under this article shall have power ~~to do any and all lawful acts or things including, but not limited to the power~~:

1. To ~~produce, generate, gather, store, transport, transmit, distribute, buy and sell energy and energy-related products~~ *provide electric distribution service*.

2. To sue and be sued.

3. To have a seal and alter the same at pleasure.

4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or

any part of the purchase price thereof on such terms and conditions as the board shall determine.

5. To render service and to acquire, own, operate, maintain and improve a system or systems.

6. To accept gifts or grants of money or of property, real or personal, from any person, municipality or federal agency and to accept voluntary or uncompensated services.

7. To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property, as hereinafter provided.

8. To contract debts, borrow money and to issue or assume the payment of bonds, and other obligations.

9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.

10. To exercise, with respect to its providing regulated utility service, all the powers set forth in § 56-49, including the power of eminent domain as prescribed for other public service corporations by general law.

11. ~~To assist its members and nonmember customers, by loans or otherwise, in the acquisition by them of such installation and wiring, and the obtaining of such machinery, equipment and appliances, as will enable them to secure the greatest benefit from the use of utility services supplied by the cooperative.~~

~~12.~~ To issue nonassessable nonvoting common and preferred capital stock or similar securities and pay dividends thereon.

~~13.~~ *12.* To become a member or stockholder in one or more other cooperatives or corporations created to engage in any business not prohibited by law, including, but not limited to, other types of public service company business.

~~14.~~ *13.* To perform any and all of the foregoing acts and do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

§ 56-231.24. Power to dispose of property.

No cooperative may sell, lease or dispose of all or substantially all of its property (other than property which, in the judgment of the board, is neither necessary nor useful in operating and maintaining the cooperative's system and which in any one year shall not exceed ~~fifty~~ *50* percent in value of the value of all the property of the cooperative, or merchandise), unless authorized to do so by the votes of at least a two-thirds majority of its members; however, a cooperative (i) may mortgage, finance (including, without limitation, pursuant to a sale and leaseback or lease and leaseback transaction), or otherwise encumber its assets by a vote of at least two-thirds of its board of directors; (ii) may sell or transfer its assets to another cooperative upon the vote of a majority of its members at any regular or special meeting if the notice of such meeting contains a copy of the terms of the proposed sale or transfer; (iii) may sell or transfer distribution system facilities to a city or town at any time following the annexation of additional territory pursuant to § 56-265.4:2 by a vote of at least two-thirds of its board of directors; or (iv) may sell, lease or dispose of its property to an affiliate pursuant to a plan approved by the Commission ~~in accordance with subsection B of § 56-590~~ by a vote of at least two-thirds of the members of the Board.

§ 56-231.32. Service to members.

No person shall become or remain a member unless such person shall use utility services supplied by such cooperative, *including electric distribution services used by the retail electric provider for services to the member*, and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such cooperative. However, nothing in this article shall prevent a cooperative from engaging in other lawful activities or enterprises. Should the cooperative acquire any utility facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing service and avoiding hardship, continue to serve the persons served directly from such facilities at the time of such acquisition without requiring that such persons become members. Such nonmember utility service customers shall have the right to become members upon nondiscriminatory terms. The charges for regulated utility services to such nonmembers shall be on a cost basis similar to the charges to members.

§ 56-231.34. Regulation by Commission.

The regulated utility services of a cooperative shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as are regulated utility services provided by other persons under the laws of ~~this~~ *the* Commonwealth. *For purposes of this article, electric distribution service is a regulated utility service.* All other business activities of a cooperative and its affiliates shall be subject to the jurisdiction of the Commission to the extent provided by § 56-231.34:1 and any other applicable laws of the Commonwealth.

§ 56-231.34:1. Separation of regulated and unregulated businesses.

A. No cooperative that engages in a regulated utility service shall conduct any unregulated business activity~~, other than traditional cooperative activities,~~ except in or through one or more affiliates of such cooperative~~, provided that a cooperative that provides regulated utility services shall have the right to~~

~~offer and make unregulated sales of electric power to its members within its certificated service territory~~. No such affiliates, formed to engage in any business that is not a regulated utility service, shall engage in regulated utility services.

B. The Commission shall promulgate rules and regulations, governing the conduct of the cooperatives, to promote effective and fair competition between (i) affiliates of cooperatives that are engaged in business activities which are not regulated utility services and (ii) other persons engaged in the same or similar businesses. The rules and regulations shall be effective by July 1, 2000, and shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;

2. Prohibiting anticompetitive behavior or self-dealing between a cooperative and its affiliates;

3. Prohibiting a cooperative from engaging in discriminatory behavior towards nonaffiliated entities; and

4. Establishing codes of conduct detailing permissible relations between a cooperative and its affiliates. In establishing such codes, the Commission shall consider, among other things, whether and, if so, under what circumstances and conditions (i) a cooperative may provide its affiliates with customer lists or other customer information, sales leads, procurement advice, joint promotions, and access to billing or mailing systems unless such information or services are made available to third parties under the same terms and conditions, (ii) the cooperative's name, logos or trademarks may be used in promotional, advertising or sales activities conducted by its affiliates, and (iii) the cooperative's vehicles, equipment, office space and employees may be used by its affiliates.

C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under Chapter 4 (§ 56-76 et seq.) ~~of this title~~.

§ 56-231.36. Construction of article; conflicting laws.

This article is to be liberally construed and the enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this article, *except the provisions of this title as they pertain to electric distribution service,* shall not apply to cooperatives operating hereunder. Any object, purpose, power, manner, method or thing ~~which~~ *that* is not specifically prohibited is permitted.

§ 56-231.38. Definitions.

As used in this article:

"Affiliate" means a separate affiliated or subsidiary corporation or other separate legal entity.

"Board" means any board of directors of a cooperative formed under or which becomes subject to this article.

~~"Commission" means the State Corporation Commission of Virginia.~~

"Cooperative" means ~~a power supply cooperative formed under the former Power Supply Cooperatives Act (§ 56-231.1 et seq.) or~~ a utility aggregation cooperative formed under this article or which becomes subject to this article.

~~"Energy" means and includes all energy, regardless of how or where it is generated or produced.~~

~~"HVACR" means heating, ventilation, air conditioning and refrigeration.~~

"Member" means any person that holds any class of membership in a cooperative.

"Obligations" means all evidences of indebtedness issued by or the payment of which is assumed by a cooperative.

"Patronage capital" includes all amounts received by a cooperative from the sale of electric ~~power~~ *transmission service* to *a retail electric provider for services to* members in excess of the cooperative's cost of furnishing electric ~~power~~ *transmission services to a retail electric provider for retail electricity services* to members and such other margins as determined by the Board.

"Person" means and includes natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.

"Propane or fuel oil equipment" means equipment and related systems to store or use propane or fuel oil products.

"Regulated utility services" means utility services that are subject to regulation as to rates or service by the Commission.

"System" means any plant, works, facility, or property used or useful in connection with ~~the purchase, generation, sale or transmission of energy, utility products and services, or both~~ *electric transmission services*.

~~"Traditional cooperative activity" means any business, service or activity in which cooperatives in Virginia have traditionally engaged and that is incidental to and substantially related to the electric utility business conducted by a cooperative on or before July 1, 1999; provided, however, that traditional cooperative activity does not include any program to (i) buy or maintain an inventory of HVACR equipment or household appliances; (ii) install or service any such equipment or household appliances~~

for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service; (iii) sell HVACR equipment or household appliances to customers metered and billed on residential rates; (iv) sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing other traditional cooperative activities; (v) sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale; or (vi) serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are other traditional cooperative activities.

"Utility services" means any products, services, and equipment related to energy *electric transmission*, telecommunications, water and sewerage.

§ 56-231.39. Organization and purpose.

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

B. Nothing in this article shall be construed to authorize a cooperative formed pursuant to this article, or any affiliate thereof, to engage, within any political subdivision of the Commonwealth on a not-for-profit basis, in the sale of products, the provision of services, or other business activity, except for electric power *transmission* services and traditional cooperative activities. However, if such business activities are not currently provided by any person other than a cooperative formed under or subject to this chapter or its affiliate and the Commission determines that no such other person is likely, within a reasonable time, to effectively provide such products and services in such political subdivision, an affiliate of a cooperative may provide such products or services on a not-for-profit basis. The Commission shall also permit an affiliate of a cooperative formed under or subject to this chapter to provide such products or services on a not-for-profit basis upon a finding that the affiliate will not

receive the benefit of any federal income tax exemption that is not available to persons other than cooperatives and will not receive the benefit of any federally guaranteed or subsidized financing that is not available to persons other than cooperatives; and provided further, that nothing in this subsection shall prohibit the continued operation of any business activities of any not-for-profit cooperative or affiliate formed, operating, and actively providing products or services to customers on or before July 1, 1999.

C. Notwithstanding any other provision of this article, the only electric service that a cooperative formed pursuant to this article may provide is electric transmission service within a certificated service territory of an electric distribution utility cooperative within the Commonwealth.

§ 56-231.43. Powers.

A. Each cooperative formed under this article shall have power ~~to do any and all lawful acts or things, including, but not limited to the power~~:

1. To ~~purchase, sell, generate, store, transport or transmit energy, energy services, products and equipment~~ *provide electric transmission service*.

2. To sue and be sued.

3. To have a seal and alter the same at pleasure.

4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

5. To render service and to acquire, own, operate, maintain and improve a system or systems.

6. To accept gifts or grants of money or of property, real or personal, and to accept voluntary and uncompensated services.

7. To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property.

8. To contract debts, borrow money and to issue or assume the payment of bonds and other obligations.

9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.

10. To exercise, with respect to its construction of regulated transmission facilities as ~~a power supply~~ *an electric transmission utility* cooperative, all the powers set forth in § 56-49, including the power of eminent domain as prescribed for other public service corporations by general law.

11. ~~To assist its members, by loans or otherwise, in the acquisition by them of energy and electrical, technological and other equipment related to the business of the cooperative.~~

~~12.~~ To issue nonassessable nonvoting common and preferred capital stock or similar securities and pay dividends thereon.

~~13.~~ *12.* To perform any and all of the foregoing acts through or by means of its own officers, agents and employees, or by contract.

B. A cooperative shall have the power and is authorized, from time to time, to issue its obligations for any corporate purpose.

1. The obligations may be authorized by resolution of the board, and may bear any date or dates, mature at any time or times, bear any interest, be payable at any times, be in any denominations, be in any form, either coupon or registered, carry any registration privileges, be executed in any manner, be payable in any medium of payment, at any place or places, and be subject to any terms of redemption, as provided by the resolution.

2. These obligations may be sold in the manner and upon the terms as the board may determine. Pending the preparation or execution of definitive bonds or obligations, interim receipts or certificates of temporary bonds may be delivered to the purchaser of such obligations.

C. A cooperative may purchase any of its own obligations.

D. The Virginia Securities Act (§ 13.1-501 et seq.) shall not apply to membership certificates issued by a cooperative or its cooperative affiliates, or subsidiaries organized prior to January 1, 1999.

§ 56-231.47. Adoption of article.

Any cooperative of ~~this~~ *the* Commonwealth engaged in ~~the purchase, sale, generation or~~ *electric* transmission ~~of electric energy products or services for sale or resale~~ *service* may come under the provisions of this article by filing with the Commission a certificate of adoption in the manner provided by subsection (b) of § 13.1-334 and relinquishing all rights and powers granted by its former charter.

§ 56-231.50. Regulation by State Corporation Commission.

The regulated utility services and operations of any cooperative organized under this article shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as are all other providers of such regulated utility services under the laws of ~~this~~ *the* Commonwealth~~; but with regard to sales of energy at wholesale, no cooperative shall be subject to the provisions of §§ 56-234 through 56-245, 56-247 and 56-249 through 56-249.6~~. *For purposes of this article, electric transmission service is a regulated utility service.* With regard to business activities ~~which~~ *that* are not regulated utility services, no cooperative shall be subject to the provisions of §§ 56-234 through 56-245 ~~and~~, 56-249

~~through 56-249.6~~*, 56-249.1, 56-249.2, and 56-249.5*. All other business activities of a cooperative and its affiliates shall be subject to the jurisdiction of the Commission to the extent provided by § 56-231.50:1 and any other applicable laws of ~~this~~ *the* Commonwealth.

§ 56-231.50:1. Separation of regulated and unregulated businesses.

A. No cooperative that engages in a regulated utility service shall conduct any unregulated business activity~~, other than traditional cooperative activities~~, except in or through one or more affiliates of such cooperative. No such affiliates, formed to engage in any business that is not a regulated utility service, shall engage in regulated utility services.

B. The Commission shall promulgate rules and regulations to promote effective and fair competition between (i) affiliates of cooperatives that are engaged in business activities which are not regulated utility services and (ii) other persons engaged in the same or similar businesses. The rules and regulations shall be effective by July 1, 2000, and shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;

2. Prohibiting anticompetitive behavior or self-dealing between a cooperative and its affiliates;

3. Prohibiting a cooperative from engaging in discriminatory behavior towards nonaffiliated entities; and

4. Establishing codes of conduct detailing permissible relations between a cooperative and its affiliates. In establishing such codes, the Commission shall consider, among other things, whether and, if so, under what circumstances and conditions (i) a cooperative may provide its affiliates with customer lists or other customer information, sales leads, procurement advice, joint promotions, and access to billing or mailing systems unless such information or services are made available to third parties under the same terms and conditions, (ii) the cooperative's name, logos or trademarks may be used in promotional, advertising or sales activities conducted by its affiliates, and (iii) the cooperative's vehicles, equipment, office space and employees may be used by its affiliates.

C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under Chapter 4 (§ 56-76 et seq.) ~~of this title~~.

§ 56-231.51. Construction of article and conflicting laws.

This article is to be liberally construed and the enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this article, *except the provisions of this title that pertain to electric transmission service*, shall not apply to cooperatives operating hereunder. Any object, purpose, power, manner, method or thing which is not specifically prohibited is permitted.

§ 56-232. Definitions.

A. ~~The term "public utility" as~~ *As* used in §§ 56-233 ~~to~~ *through* 56-240 and 56-246 ~~to~~ *through* 56-250:

1. ~~Shall~~ *"Public utility" shall* mean and embrace every corporation (other than a municipality, *except as provided in subdivision 4*), company, individual, *municipal electric authority,* or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that now or hereafter may own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the *(i)* production, transmission, delivery, or furnishing of heat, chilled air, chilled water, ~~light, power,~~ or water, or sewerage facilities, either directly or indirectly, to or for the public *or (ii) furnishing of electric transmission or distribution service*.

2. Notwithstanding any provision of subdivision 1 of this subsection or subsection G of § 13.1-620, *"public utility"* shall also include any governmental entity established pursuant to the laws of any other state, corporation (other than a municipality established under the laws of this Commonwealth, *except as provided in subdivision 4*), company, individual, or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that at any time owns, manages or controls any plant or equipment, or any part thereof, located within the Commonwealth, which plant or equipment is used in the provision of sewage treatment services to or for an authority as defined in § 15.2-5101; however, the Commission shall have no jurisdiction to regulate the rates, terms and conditions of sewage treatment services that are provided by any such public utility directly to persons pursuant to the terms of a franchise agreement between the public utility and a municipality established under the laws of ~~this~~ *the* Commonwealth.

3. Except as provided in subdivision 2, *"public utility"* shall not be construed to include any corporation created under the provisions of Title 13.1 unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company.

4. "Corporation" includes a municipality that provides electric transmission or distribution service.

B. Notwithstanding any provision of law to the contrary, no person, firm, corporation, or other entity shall be deemed a public utility or public service company, solely by virtue of engaging in production, transmission, or sale at retail of electric power as a qualifying small power producer using renewable or

nondepletable primary energy sources within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617) and not exceeding 7.5 megawatts of rated capacity, nor solely by virtue of serving as an aggregator of the production of such small power producers, provided that the portion of the output of any qualifying small power producer which is sold at retail shall not be sold to residential consumers.

C. No qualifying small power producer, within the meaning of regulations adopted by the Federal Energy Regulatory Commission, shall be deemed a public utility within the meaning of Chapter 7 (§ 62.1-80 et seq.) of Title 62.1.

D. The term "public utility" as ~~herein~~ defined *in subsection A* shall not be construed to include any chilled water air-conditioning cooperative serving residences in less than a one square mile area, or any company that is excluded from the definition of "public utility" by subdivision ~~(b)(4), (b)(8), (b)(9)~~ *2, 6* or ~~(b)(10)~~ *7* of *such definition in* § 56-265.1.

E. Subject to the provisions of § 56-232.1, the term "schedules" as used in §§ 56-234 through 56-245 shall include schedules of rates and charges for service to the public and also contracts for rates and charges in sales at wholesale to other public utilities or for divisions of rates between public utilities, but shall not include contracts of telephone companies with the state government or contracts of other public utilities with municipal corporations or the federal or state government, or any contract executed prior to July 1, 1950.

F. As used in this chapter:

"Electric utility" means a public utility that furnishes electric transmission or distribution utility service.

"Independent distribution system operator" means the independent distribution system operator established under § 56-624.

"Municipal electric authority" means an electric authority created by a municipality under Chapter 54 (§ 15.2-5400 et seq.) of Title 15.2.

"Power generation company" means a person owning, controlling, or operating a facility in the Commonwealth that produces electricity for sale.

§ 56-234. Duty to furnish adequate service at reasonable and uniform rates.

A. It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. Notwithstanding any other provision of law:

1. A telephone company shall not have the duty to extend or expand its facilities to furnish service and facilities when the person, firm or corporation has service available from one or more alternative providers of wireline or terrestrial wireless communications services at prevailing market rates; and

2. A telephone company may meet its duty to furnish reasonably adequate service and facilities through the use of any and all available wireline and terrestrial wireless technologies; however, a telephone company, when restoring service to an existing wireline customer, shall offer the option to furnish service using wireline facilities.

For purposes of subdivisions 1 and 2, the Commission shall have the authority upon request of an individual, corporation, or other entity, or a telephone company, to determine whether the wireline or terrestrial wireless communications service available to the party requesting service is a reasonably adequate alternative to local exchange telephone service.

The use by a telephone company of wireline and terrestrial wireless technologies shall not be construed to grant any additional jurisdiction or authority to the Commission over such technologies.

For purposes of subdivision 1, "prevailing market rates" means rates similar to those generally available to consumers in competitive areas for the same services.

B. It shall be the duty of every public utility to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions. However, no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest. The Commission's final order regarding any petition filed by an ~~investor-owned~~ electric utility for approval of a voluntary rate or rate design test or experiment shall be entered the earlier of not more than six months after the filing of the petition or not more than three months after the date of any evidentiary hearing concerning such petition. The charge for such service shall be at the lowest rate applicable for such service in accordance with schedules filed with the Commission pursuant to § 56-236. But, subject to the provisions of § 56-232.1, nothing contained herein or in § 56-481.1 shall apply to (i) schedules of rates for any telecommunications service provided to the public by virtue of any contract with, (ii) for any service provided under or relating to a contract for telecommunications services with, or (iii) contracts for service rendered by any telephone company to, the state government or any agency thereof, or by any other public utility to any

municipal corporation or to the state or federal government. The provisions hereof shall not apply to or in any way affect any proceeding pending in the State Corporation Commission on or before July 1, 1950, and shall not confer on the Commission any jurisdiction not now vested in it with respect to any such proceeding.

C. The Commission may conclude that competition can effectively ensure reasonably adequate retail services in competitive exchanges and may carry out its duty to ensure that a public utility is furnishing reasonably adequate retail service in its competitive exchanges by monitoring individual customer complaints and requiring appropriate responses to such complaints.

§ 56-234.1. Liability to customer for violation of duty to determine and charge lowest rate applicable.

It shall be the duty of every public utility, upon written request by the customer, to determine the lowest rate applicable, provided that such public utility shall not be required to make such a determination for any single customer more frequently than annually. If the rate charged thereafter is not such lowest rate applicable, such public utility shall be liable to the customer for the amount of the difference between the amount paid by the customer and the amount that would have been paid if the customer had been charged the lowest rate applicable from and after the customer's request; provided that the public utility may require and rely on written information from the customer relating to the customer's expected demand for and use of the utility service where such information is relevant to the determination required hereunder. Where a contract for a specified period of time is lawfully required by the public utility, the rates prescribed by such contract shall be lawful during the term of such contract so long as they are the lowest applicable to the conditions of service specified in the contract, unless the actual conditions of service require the application of a higher rate. This section shall not be applicable to rates charged by any public utility *(i)* prior to July 1, 1970, *or (ii) that provides electric transmission or distribution service*.

§ 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 in accordance with subsection A of that section~~.

§ 56-234.3. Monitoring of capital projects and practices of electric utilities.

~~Prior to construction or financial commitments therefor, any electric utility subject to the jurisdiction of the State Corporation Commission intending to construct any new generation facility capable of producing 100 megawatts or more of electric energy shall submit to the State Corporation Commission a petition setting forth the nature of the proposed construction and the necessity therefor in relation to its projected forecast of programs of operation. Such petition shall include (i) the utility's preliminary construction plans, (ii) the methods by which the work will be contracted, by competitive bid or otherwise, (iii) the names and addresses of the contractors and subcontractors, when known, proposed to do such work, and (iv) the plan by which the public utility will monitor such construction to ensure that the work will be done in a proper, expeditious and efficient manner. The Commission, upon receipt of the petition, shall order that a public hearing be held to assist it in accumulating as much relevant data as possible in reaching its determination for the necessity of the proposed generation facility. The Commission shall review the petition, consider the testimony given at the public hearing, and determine whether the proposed improvements are necessary to enable the public utility to furnish reasonably adequate service and facilities at reasonable and just rates. After making its determination, the Commission shall enter an order within nine months after the filing of such petition either approving or disapproving the proposed expenditure. Upon approval, the Commission shall set forth in its order terms and conditions it deems necessary for the efficient and proper construction of the generation facility.~~

~~Every electric utility capable of producing 100 megawatts or more of electric energy shall file with the Commission a projected forecast of its programs of operation, on such terms and for such time periods as directed by the Commission. Such a forecast shall include, but not be limited to, the anticipated required capacity to fulfill the requirements of the forecast, how the utility will achieve such capacity, the financial requirements for the period covered, the anticipated sources of those financial requirements, the research and development procedures, where appropriate, of new energy sources, and the budget for the research and development program.~~

~~In addition, the~~*The* Commission shall investigate and monitor the major construction projects of any public utility *subject to its jurisdiction* to assure that such projects are being conducted in an economical, expeditious, and efficient manner.

Whenever uneconomical, inefficient or wasteful practices, procedures, designs or planning are found to exist, the Commission shall have the authority to employ, at the sole expense of the utility, qualified persons, answerable solely to the Commission, who shall audit and investigate such practices, procedures, designs or planning and recommend to the Commission measures necessary to correct or eliminate such practices, procedures, designs or planning.

Consistent with § 56-235.3, any public utility, electric or otherwise, seeking to pass through the cost

of any capital project to its customers, shall have the burden of proving that such cost was incurred through reasonable, proper and efficient practices, and to the extent that such public utility fails to bear such burden of proof, such costs shall not be passed on to its customers in its rate base.

The Commission shall have the authority to approve, disapprove, or alter the utility's program in a manner consistent with the best interest of the citizens of the Commonwealth. The petitioning or filing public utility may appeal the decision of the Commission to the Supreme Court of Virginia.

§ 56-235.1. Conservation of energy and capital resources.

It shall be the duty of the Commission to investigate from time to time the acts, practices, rates or charges of public utilities so as to determine whether such acts, practices, rates or charges are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility service. Where the Commission finds that the public interest would be served, it may order any public utility to eliminate, alter or adopt a substitute for any act, practice, rate or charge which is not reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in providing utility service and it may further provide for the dissemination of information to the public, either through the Commission staff or through a public utility, in order to promote public understanding and cooperation in achieving effective conservation of such resources; provided, however, that nothing in this section shall be construed to authorize the adoption of any rate or charge which is clearly not cost-based or which is in the nature of a penalty for otherwise permissible use of utility services. This section shall not apply to telephone *or electric transmission and distribution service* companies.

§ 56-235.2. All rates, tolls, etc., to be just and reasonable to jurisdictional customers; findings and conclusions to be set forth.

A. Any rate, toll, charge or schedule of any public utility operating in ~~this~~ *the* Commonwealth shall be considered to be just and reasonable only if~~:~~ ~~(1)~~ ~~the~~ ~~public~~ ~~utility~~ ~~has~~ ~~demonstrated~~ *the Commission concludes* that*: (i)* such rates, tolls, charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the public utility in serving customers within the jurisdiction of the Commission, including such normalization for nonrecurring costs and annualized adjustments for future costs as the Commission finds reasonably can be predicted to occur during the rate year, and a fair return on the public utility's rate base used to serve those jurisdictional customers~~,~~ ~~which~~ ~~return~~ ~~shall be~~ ~~calculated~~ ~~in~~ ~~accordance~~ ~~with~~ ~~§ 56-585.1~~ ~~for~~ ~~utilities~~ ~~subject~~ ~~to~~ ~~such~~ ~~section~~; ~~(1a)~~ ~~the~~ ~~investor-owned~~ ~~public~~ ~~electric~~ ~~utility~~ ~~has~~ ~~demonstrated~~ ~~that~~ *(ii)* no part of such rates, tolls, charges or schedules includes costs for advertisement, except for advertisements either required by law or rule or regulation~~,~~ ~~or~~ ~~for advertisements~~ ~~which~~ ~~solely~~ ~~promote~~ ~~the~~ ~~public~~ ~~interest,~~ ~~conservation~~ ~~or~~ ~~more~~ ~~efficient~~ ~~use~~ ~~of~~ ~~energy~~; and ~~(2)~~ ~~the~~ ~~public~~ ~~utility~~ ~~has~~ ~~demonstrated~~ ~~that~~ *(iii)* such rates, tolls, charges or schedules contain reasonable classifications of customers. Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest. Such special charges shall not be limited by the provisions of § 56-235.4. In determining costs of service, the Commission may use the test year method of estimating revenue needs. In any Commission order establishing a fair and reasonable rate of return for an investor-owned gas, telephone or electric ~~public~~ utility, the Commission shall set forth the findings of fact and conclusions of law upon which such order is based.

B. A public utility, other than an electric utility, may file an application for a change in its rates, tolls, charges, or schedules, in accordance with a schedule determined by the Commission. The independent distribution system operator may file an application for a change in the rate, toll, charge, or schedule of an electric utility for open-access distribution service, in accordance with a schedule determined by the Commission. An electric utility may file an application for a change in its rates, tolls, charges, or schedules if it requests in writing that the independent distribution system operator file an application for a change in such rates, tolls, charges, or schedules, and the independent distribution system operator refuses to do so or if after 90 days of receiving the written notice, the independent distribution system operator has not filed such an application. Rates for open-access distribution service shall be consistent with the requirements of § 56-628.

C. The Commission may permit the use of the cash-flow method for determining the revenue requirement of a municipal electric authority, municipality, or electric utility cooperative. The return of a municipal electric authority, municipality, or electric utility cooperative may be based on the entity's actual debt service and a reasonable coverage ratio. In determining a reasonable coverage ratio, the Commission shall consider the coverage ratios required in the entity's bond indentures or ordinances and the most recent rate action of the Commission or other rate-setting authority for the entity.

D. For ratemaking purposes, the Commission shall determine the federal and state income tax costs for investor-owned water, gas, or electric utility that is part of a publicly-traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the

applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

~~B.~~ *E.* The Commission shall, before approving special rates, contracts, incentives or other alternative regulatory plans under subsection A, ensure that such action (i) protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable electric service.

~~C.~~ *F.* After notice and public hearing, the Commission shall issue guidelines for special rates adopted pursuant to subsection A that will ensure that other customers are not caused to bear increased rates as a result of such special rates.

§ 56-235.3. Procedures for investigation of rate applications.

At any hearing on the application of a public utility *or independent distribution system operator* for a change in a rate, toll, charge, or schedule, the burden of proof to show that the proposed change is just and reasonable~~,~~ shall be upon the ~~public utility~~ *applicant*. The Commission shall be authorized to prescribe all necessary rules and regulations for the conduct of such hearings, which shall provide for full and fair participation in such hearings by any interested person subject to such guidelines as the Commission may deem appropriate. Upon the conclusion of such hearings, the Commission shall issue an order and such opinion as is necessary to set forth fully the Commission's findings of fact and conclusions of law. Copies of the transcripts of public hearings held to establish a fair rate of return and changes in rates, tolls, and charges for investor-owned public utilities involving significant public interest shall be placed in no less than one location nor more than three locations in the geographic area served by the utility. The Commission shall determine which proceedings are of sufficient interest to require the placing of such transcripts and the location or locations to be used~~;~~, provided, however, that proceedings involving investor-owned utilities serving 25,000 or more customers shall be deemed to be of sufficient public interest.

§ 56-235.4. Prohibition of multiple rate increases within any 12-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~~ *12-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.

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~~ *12* 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.

§ 56-235.6. Performance-based regulation of certain utilities.

A. Notwithstanding any provision of law to the contrary, *and unless the Commission finds that clear and convincing evidence exists that the cost of service methodology set forth in § 56-235.2 will better achieve relevant state policy, including customer benefits, in an economically efficient manner,* the Commission ~~may approve~~ *shall adopt* a performance-based ~~ratemaking~~ *regulation* methodology for ~~any~~ *each* public utility engaged in the business of furnishing ~~gas service (for the purposes of this section a "gas utility") or electricity~~ *electric transmission or distribution* service (for the purposes of this section an "electric utility")~~, upon application of the gas utility or electric utility, and~~ after such notice and opportunity for hearing as the Commission may prescribe. For the purposes of this section, "performance-based ~~ratemaking~~ *regulation* methodology" ~~shall mean a method of establishing rates and charges that are in the public interest, and that departs in whole or in part from the cost-of-service methodology set forth in § 56-235.2~~ *for an electric utility means regulations and revenue decisions that (i) establish the cost recovery and earnings potential for electric utilities and (ii) align electric utility incentives with customer value and relevant public policy goals. Performance-based forms of regulation may include, but not be limited to, multi-year rate plans, revenue decoupling, performance incentive mechanisms, shared savings mechanisms, measures to reduce utility incentives for capital expenditures, fixed or capped base rates, the use of revenue indexing, price indexing, ranges of authorized return, and*

innovative utilization of utility-related assets and activities in ways that benefit both the utility and its customers and may include a mechanism for automatic annual adjustments to revenues or prices to reflect changes in any index adopted for the implementation of such performance-based form of regulation. The Commission shall conduct a stakeholder process to solicit input on how performance-based regulation of electric utilities should be implemented. This process shall be completed by June 1, 2021. An electric utility shall apply for a performance-based regulation methodology under this section before it provides electric transmission or distribution service in the Commonwealth or by June 1, 2022, whichever is later.

B. An electric utility shall include the following items in its performance-based regulation methodology proposal: (i) a multi-year rate plan with a rate review interval of three to five years; (ii) incentives based on outcomes, including reliability and customer satisfaction; (iii) a revenue decoupling mechanism; (iv) an earnings sharing mechanism or cap on revenue, or both; and (v) a base return on capital investment that is indexed to the risk-free rate as measured by the 30-year bonds issued by the United States government. The Commission shall adopt the proposal if it (a) is complete; (b) aligns the utility's behavior with relevant state policy goals, including reliability and cost; (c) is cost-effective; (d) does not result in excessive rates; (e) does not unreasonably prejudice or disadvantage any class of electric utility customers; and (f) is in the public interest. If the Commission denies a proposal, it may provide the utility an opportunity to revise the proposal.

C. Notwithstanding any provision of law to the contrary, the Commission may approve a performance-based ratemaking methodology for any public utility engaged in the business of furnishing gas service (for the purposes of this section a "gas utility"), upon application of the gas utility, and after such notice and opportunity for hearing as the Commission may prescribe. For the purposes of this section, "performance-based ratemaking methodology" shall mean a method of establishing rates and charges that are in the public interest, and that departs in whole or in part from the cost-of-service methodology set forth in § 56-235.2.

~~B.~~ *D.* The Commission shall approve ~~such~~ *the* performance-based ratemaking methodology *of a gas utility* if it finds that it~~:~~ (i) preserves adequate service to all classes of customers ~~(~~, including transportation-only customers ~~if for a gas utility)~~; (ii) does not unreasonably prejudice or disadvantage any class of gas utility ~~or electric utility customers~~; (iii) provides incentives for improved performance by the gas utility ~~or electric utility~~ in the conduct of its public duties; (iv) results in rates that are not excessive; and (v) is in the public interest. Performance-based forms of regulation *for a gas utility* may include, but not be limited to, fixed or capped base rates, the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing ~~for gas utilities~~, and innovative utilization of utility-related assets and activities (such as a gas utility's off-system sales of excess gas supplies and release of upstream pipeline capacity, performance of billing services for other gas ~~or electricity~~ suppliers, and reduction or elimination of regulatory requirements) in ways that benefit both the utility and its customers and may include a mechanism for automatic annual adjustments to revenues or prices to reflect changes in any index adopted for the implementation of such performance-based form of regulation. In making the findings required by this subsection, the Commission shall include, but not be limited to, in its considerations~~:~~ ~~(i)~~ *(a)* any proposed measures, including investments in infrastructure, that are reasonably estimated to preserve or improve system reliability, safety, supply diversity, and gas utility transportation options~~;~~ and ~~(ii)~~ *(b)* other customer benefits that are reasonably estimated to accrue from the gas or electric utility's proposal.

~~C.~~ *E.* Each gas utility ~~or electric utility~~ shall have the option to apply for implementation of a performance-based form of regulation. If the Commission approves the application with modifications, the gas utility ~~or electric utility~~ may, at its option, withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application. The Commission may, after notice and opportunity for hearing, alter, amend or revoke, or authorize a gas utility ~~or electric utility~~ to discontinue, a performance-based form of regulation previously implemented under this section if it finds that (i) service to one or more classes of customers has deteriorated, or will deteriorate, to the point that the public interest will not be served by continuation of the performance-based form of regulation; (ii) any class of gas utility customer ~~or electric utility customer~~ is being unreasonably prejudiced or disadvantaged by the performance-based form of regulation; (iii) the performance-based form of regulation does not, or will not, provide reasonable incentives for improved performance by a gas utility ~~or electric utility~~ in the conduct of its public duties (which determination may include, but not be limited to, consideration of whether rates are inadequate to recover a gas utility's ~~or electric utility's~~ cost of service); (iv) the performance-based form of regulation is resulting in rates that are excessive compared to a gas utility's ~~or electric utility's~~ cost of service and any benefits that accrue from the performance-based plan; (v) the terms ordered by the Commission in connection with approval of a gas utility's ~~or electric utility's~~ implementation of a performance-based form of regulation have been violated; or (vi) the performance-based form of regulation is no longer in the

public interest. Any request by a gas utility ~~or electric utility~~ to discontinue its implementation of a performance-based form of regulation may include application pursuant to this chapter for approval of new rates under the standards of § 56-235.2 ~~for a gas utility or pursuant to § 56-585.1 for an investor-owned incumbent electric utility~~.

~~D.~~ *F.* The Commission shall use the annual review process established in § 56-234.2 to monitor each performance-based form of regulation approved under this section and to make any annual prospective adjustments to revenues or prices necessary to reflect increases or decreases in any index adopted for the implementation of such performance-based form of regulation.

§ 56-235.8. Retail supply choice for natural gas customers.

A. Notwithstanding any provision of law to the contrary, each public utility authorized to furnish natural gas service in Virginia (gas utility) is authorized to offer to all of the gas utility's customers not eligible for transportation service under tariffs in effect on the effective date of this section, direct access to gas suppliers (retail supply choice) by filing a plan for implementing retail supply choice with the State Corporation Commission for approval. The provisions of this section shall not apply to any retail supply choice pilot program in effect on July 1, 1999. The Commission shall accept such a plan for filing within ~~thirty~~ *30* days of filing if it contains, at a minimum:

1. A schedule for implementing retail supply choice for all of its customers;

2. Tariff revisions, including proposed unbundled rates for firm and interruptible service (which may utilize a cost allocation and rate design formulated to recover the gas utility's nongas fixed costs on a nonvolumetric basis) and terms and conditions of service designed to provide nondiscriminatory open access over its transportation system, comparable to the transportation service provided by the gas utility to itself, to allow competitive suppliers to sell natural gas directly to the gas utility's customers. Any proposed unbundling rates shall include an explanation of the methodology used to develop the rates and a calculation of revenues, by customer class, thereby produced;

3. Nonbypassable, competitively neutral annual surcharges for the gas utility to properly allocate and recover from its firm service customers not eligible for nonpilot transportation service under tariffs in effect on the effective date of this section, its nonmitigable costs associated with the provision of retail supply choice, including prudently incurred contract obligation costs and transition costs. For the purposes of this section, contract obligation costs are costs associated with acquiring, maintaining or terminating interstate and intrastate pipeline and storage capacity contracts, less revenues generated by mitigating such contract obligations, whether by off-system sales, capacity release, pipeline supplier refunds or otherwise; and transition costs are costs incurred by the gas utility associated with educating the public on retail supply choice and redesigning its facilities, operations and systems to permit retail supply choice;

4. Tariff provisions to balance the receipts and deliveries of gas supplies to retail supply choice customers and allocate the gas utility's gas costs so that one class of customers is not subsidized by another class of customers;

5. Tariff provisions requiring the gas utility, at a minimum, to offer gas suppliers or retail supply choice customers the right to acquire the gas utility's upstream transmission and/or storage capacity in a manner that assures that one class of customers is not subsidized by another class of customers, provided that nothing contained herein shall deny the gas utility the right to request Commission approval of such tariff provisions as are designed to ensure the safe and reliable delivery of natural gas to firm service customers on its system, including provisions requiring gas suppliers to accept assignment of upstream transportation and storage capacity, and/or allowing the gas utility to retain a portion of its upstream transportation and storage capacity to ensure safe and reliable natural gas service to its customers;

6. A code of conduct governing the activities and relationships between the gas utility and gas suppliers to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. Such codes of conduct shall incorporate or be consistent with any rule or guideline established by the Commission; and

7. Any other requirement established by Commission rule or regulation.

The Commission may, by rule or regulation, impose such additional filing requirements as it deems necessary in the public interest. The Commission may also require a gas utility to continue to serve as a gas supplier to its customers after the gas utility's plan becomes effective and under such terms and conditions as are necessary to protect the public interest.

B. After the Commission has accepted a filing as provided in subsection A, the Commission shall review and approve a plan filed by a gas utility unless it determines, after notice and an opportunity for public hearing, that the plan would:

1. Adversely affect the quality, safety, or reliability of natural gas service by the gas utility or the provision of adequate service to the gas utility's customers;

2. Result in rates charged by the gas utility that are not just and reasonable rates within the contemplation of § 56-235.2 or that are in excess of levels approved by the Commission under

§ 56-235.6, as the case may be;

3. Adversely affect the gas utility's customers not participating in the retail supply choice plan;

4. Unreasonably discriminate against one class of the gas utility's customers in favor of another class (provided, however, that a gas utility's recovery of nongas fixed costs on a nonvolumetric basis shall not necessarily constitute unreasonable discrimination); or

5. Not be in the public interest.

The Commission shall, after the acceptance of a filing of a retail supply choice plan, approve or disapprove the plan within 120 days. The 120-day period may be extended by Commission order for an additional period not to exceed ~~sixty~~ *60* days. The retail supply choice plan shall be deemed approved if the Commission fails to act within 120 days or any extended period ordered by the Commission. The Commission shall approve a retail supply choice plan filed by a gas utility pursuant to this subsection regardless of whether it has promulgated rules and regulations pursuant to subsection A. The Commission may also modify a plan filed by a gas utility to ensure that it conforms to the provisions of this subsection and is otherwise in the public interest. Plans approved pursuant to this section shall not be placed into effect before July 1, 2000.

C. The Commission may, on its own motion, direct a gas utility to file a retail supply choice plan, which shall comply with subsection A, shall include such other details in the plan as the Commission may require, and does not cause the effects set forth in subsection B, or the Commission may, on its own motion, propose a plan for a gas utility for retail supply choice that complies with the requirements of subsection A and does not cause the effects set forth in subsection B. The Commission may approve any plans under this subsection after notice to all affected parties and an opportunity for hearing.

D. Once a plan becomes effective pursuant to this section, if the Commission determines, after notice and opportunity for hearing, that the plan is causing, or is reasonably likely to cause, the effects set forth in subsection B, it may order revisions to the plan to remove such effects. Any such revisions to the plan will operate prospectively only.

E. If, upon application of at least ~~twenty-five~~ *25* percent of retail supply choice customers or of 500 retail choice customers, whichever number is lesser, or by the gas utility, it is alleged that the marketplace for retail supply choice customer is not reasonably competitive or results in rates unreasonably in excess of what would otherwise be charged by the gas utility, or if the Commission renders such a determination upon its own motion, then the Commission may, after notice, and opportunity for hearing, terminate the gas utility's retail supply choice program and provide for an orderly return of the retail choice customers to the gas utility's traditional retail natural gas sales service. In such event, the gas utility shall be given the opportunity to acquire, under reasonable and competitive terms and conditions and within a reasonable time period, such upstream transportation and storage capacity as is necessary for it to provide traditional retail natural gas sales service to former retail supply choice customers.

F. Licensure of gas suppliers.

1. No person, other than a gas utility, shall engage in the business of selling natural gas to the residential and small commercial customers of a gas utility that has an approved plan implementing retail supply choice unless such person (for the purpose of this section, gas supplier) holds a license issued by the Commission. An application for a gas supplier license must be made to the Commission in writing, be verified by oath or affirmation and be in such form and contain such information as the Commission may, by rule or regulation, require. For purposes of this subsection, the Commission shall require a gas supplier to demonstrate that it has the means to provide natural gas to essential human needs customers. A gas supplier license shall be issued to any qualified applicant within ~~forty-five~~ *45* days of the date of filing such application, authorizing in whole or in part the service covered by the application, unless the Commission determines otherwise for good cause shown. A person holding such a license shall not be considered a "public service corporation," "public service company" or a "public utility" and shall not be subject to regulation as such; however, nothing contained herein shall be construed to affect the liability of such a person for any license tax levied pursuant to Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1. No license issued under this chapter shall be transferred without prior Commission approval finding that such transfer is not inconsistent with the public interest. If the Commission determines, after notice and opportunity for public hearing, that a gas supplier has failed to comply with the provisions of this subsection or the Commission's rules, regulations or orders, the Commission may enjoin, fine, or punish any such failure pursuant to the Commission's authority under this statute and under Title 12.1 of the Code of Virginia. The Commission may also suspend or revoke the gas supplier's license or take such other action as is necessary to protect the public interest.

2. The Commission shall establish rules and regulations for the implementation of this subsection, provided that:

a. The Commission's rules and regulations shall not govern the rates charged by licensed gas

suppliers, except that the Commission's rules and regulations may govern the terms and conditions of service of licensed gas suppliers to protect the gas utility's customers from commercially unreasonable terms and conditions; and

b. The Commission's rules and regulations shall permit an affiliate of the gas utility to be licensed as a gas supplier and to participate in the gas utility's retail supply choice program under the same terms and conditions as gas suppliers not affiliated with the gas utility.

3. The Commission shall also have the authority to issue rules and regulations governing the marketing practices of gas suppliers.

G. Retail customers' private right of action; marketing practices.

1. No gas supplier shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing or marketing gas service.

2. Any person who suffers loss (i) as the result of fraudulent marketing practices, including telemarketing practices, engaged in by any gas supplier providing any service made competitive under this section, or of any violation of rules and regulations issued by the Commission pursuant to subdivision F 3, or (ii) as the result of any violation of subdivision 1 of this subsection, shall be entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or $1,000, whichever is greater. Notwithstanding any other provisions of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorney's fees and court costs.

3. The Attorney General, the attorney for the Commonwealth or the attorney for the city, county or town may cause an action to be brought in the appropriate circuit court for relief of violations referenced in subdivision 2 ~~of this subsection~~.

4. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person or governmental agency initiating an action pursuant to this section may be awarded reasonable attorney's fees and court costs.

5. Any action pursuant to this subsection shall be commenced by persons other than the Commission within two years after its accrual. The cause of action shall accrue as provided in § 8.01-230. However, if the Commission initiates proceedings, or any other governmental agency files suit for violations under this section, the time during which such proceeding or governmental suit and all appeals therefrom are pending shall not be counted as any part of the period within which an action under this section shall be brought.

6. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of this subsection, provided that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

7. In any case arising under this subsection, no liability shall be imposed upon any gas supplier who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of subdivision 1 of this subsection was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subdivision 4 of this subsection to individuals aggrieved as a result of an unintentional violation of this subsection.

H. Authorized public utilities shall file with the Commission tariff revisions reflecting the net effect of the elimination of taxes pursuant to subsection B of § 58.1-2904 and the addition of state income taxes pursuant to § 58.1-400. Such tariffs shall be effective for service rendered on and after January 1, 2001, and shall be filed at least ~~forty-five~~ *45* days prior to the effective date. Such filing shall not constitute a rate increase for the purposes of § 56-235.4.

I. Consumer education.

1. The Commission shall develop a consumer education program designed to provide the following information to retail customers concerning retail supply choice for natural gas customers:

a. Opportunities and options in choosing natural gas suppliers;

b. Marketing and billing information gas suppliers will be required to furnish retail customers;

c. Retail customers' rights and obligations concerning the purchase of natural gas and related services; and

d. Such other information as the Commission may deem necessary and appropriate and in the public interest.

2. The consumer education program authorized herein may be conducted in conjunction with the program provided for in § ~~56-592~~ *56-637*.

3. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against gas utilities, public service

companies, licensed suppliers and other providers of any services affected by this section. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of § 56-235.8 and to enjoin or punish any violations thereof pursuant to its authority under § 56-235.8, this title, or Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

4. For all billing statements sent on and after August 1, 2000, all gas utilities, as defined in subsection A, shall enclose the following information in all billing statements for retail natural gas service:

a. Gas utilities shall separately state an approximate amount of the tax imposed under §§ 58.1-2626, 58.1-2660 and 58.1-3731 which is included in the customer's bill until such tax is no longer imposed; and

b. For all such billing statements, a statement which reads as follows shall be included: "Beginning January 1, 2001, the current state and local gross receipts taxes on sales of natural gas will be replaced by a tax based on the consumption of natural gas by consumers. In the past, the current gross receipts tax has always been included in the rate charged for natural gas. Now, this tax is being separately stated. The total gross receipts tax imposed by Virginia and the localities is approximately two percent of the amount charged to consumers. The new state and local consumption tax will be charged at an approximate rate of $0.02 per 100 cubic feet (CCF) of natural gas consumed. While this rate was designed to be less than, or equal to, the effect of the current gross receipts tax which is being replaced, the tax you pay may actually be higher in your locality. This statement is being provided for your information."

§ 56-235.12. Economic development programs.

A. As used in this section:

"Acquire utility rights-of-way" means the planning, surveying, permitting, and acquisition of land, including options, easements, and other estates in land.

"Costs" includes depreciation, taxes, return on investment, and other land-related costs associated with costs incurred to acquire utility rights-of-way pursuant to a Program.

"Economic Development Program" or "Program" means a program under which a utility is authorized by the Commission under this section to acquire utility rights-of-way for one or more qualified economic development sites.

"Partnership" means the Virginia Economic Development Partnership Authority.

"Qualified economic development site" means an industrial site within the Commonwealth that has been certified by the Partnership pursuant to subsection B.

"Utility" means a public utility providing water, sewer, electric, or natural gas service to retail customers in the Commonwealth.

B. The Partnership is authorized to certify that an industrial site is a qualified economic development site if it finds that:

1. The person with legal authority to develop the site is authorized to contract for the extension of utility service to the site;

2. The development of the site is compliant with applicable zoning requirements and is consistent with the locality's comprehensive plan;

3. Applicable environmental surveys and reviews, including any wetlands survey, geotechnical borings, a topographical survey, a cultural resources review, an Endangered Species review, or a Phase 1 Environmental Assessment, if required, are completed;

4. An estimate of the costs of the development of the site has been prepared and provided to the Partnership; and

5. The acquisition of utility rights-of-way for the site will further the creation of new jobs and capital investment in the Commonwealth by facilitating the location of one or more significant economic development projects in the Commonwealth.

C. A utility proposing an Economic Development Program shall file a proposal with the Commission for review. A proposal for approval of a Program shall include an analysis of how acquiring utility rights-of-way will enhance the Commonwealth's infrastructure and promote the Commonwealth's competitive business environment by improving the readiness of a qualified economic development site.

D. The Commission shall approve, or approve with appropriate modifications, a Program if it finds that:

1. The implementation of the Program will provide material economic development benefits that might not otherwise be attained absent the Commission's approval of the Program;

2. The Program proposes a rate mechanism, including base rates or a rate adjustment clause, that authorizes the utility to recover its costs incurred in implementing the Program until such time as the investment is placed in service;

3. The proposal to acquire utility rights-of-way would not otherwise be immediately supported by expected revenues from new loads served under the Program at the qualified economic development site;

4. The utility's capital investment does not exceed one percent of gross plant investment in the aggregate or $5 million for any specific qualified economic development site;

5. The associated charges resulting from implementation of the Program will apply only to firm service customers;

6. The Virginia Economic Development Partnership has certified pursuant to subsection B that the site for which the utility proposes to acquire utility rights-of-way under the Program is a qualified economic development site;

7. The Program is designed only to acquire utility rights-of-way to a qualified economic development site and not to provide service to other customers or potential customers;

8. The utility's assumptions regarding costs to acquire utility rights-of-way under the Program are not unduly speculative; and

9. The Program is not otherwise contrary to the public interest.

E. After Commission review and absent action by the Commission to the contrary, the Program shall take effect 120 days following the date on which the proposal for the Program was filed. Any amendment to a Program following its implementation shall be submitted to the Commission at least 60 days prior to the proposed effective date thereof and, absent action by the Commission to the contrary, the amendment shall become effective on such date.

F. The Commission's approval of a Program shall authorize the utility to:

1. Acquire utility rights-of-way for the ordinary extension of utility facilities in the normal course of business to one or more qualified economic development sites; and

2. Recover costs incurred in implementing the Program, including costs deferred and associated carrying costs, from the time incurred until the time the Commission establishes new rates that include recovery of such deferred costs.

G. A utility, in implementing a Program, shall in good faith coordinate the acquisition of rights-of-way with communications providers and other utilities, including water, sewer, electric, or natural gas utilities, so that any facilities ultimately to be constructed may be collocated to the extent feasible.

H. In calculating the utility's return on the investment with regard to costs incurred in implementing a Program, the Commission shall use the utility's regulatory capital structure, including the cost of equity most recently approved by the Commission. If the utility's cost of capital at the time its Economic Development Program is filed has not been changed by order of the Commission within the preceding five years, the Commission may require the utility to file an updated weighted average cost of capital, and the utility may propose an updated weighted average cost of capital.

I. Nothing in this section shall:

1. Be deemed to prevent one or more utilities from jointly filing a Program under this section, and the Commission may consolidate consideration of Programs filed to serve the same qualified economic development site;

2. Otherwise impair or enlarge the powers granted to public service companies by this title; *or*

3. Permit a Program to include conversion of existing retail propane customers to electric or natural gas~~; or~~

~~4. Prohibit an electric utility from recovering its transmission-related costs incurred in implementing the Program through a rate adjustment clause pursuant to subdivision A 4 of § 56-585.1~~.

J. A utility may request proprietary treatment of any and all supporting materials provided in support of a Program.

§ 56-236.2. Suspension of service to sewerage system.

No ~~public utility~~ *retail electric provider* furnishing ~~heat, light or power~~ *electric distribution service* to a sewerage system, after receiving notice pursuant to § 56-261 or § 56-265.11:1 from the person operating such system, may suspend service for nonpayment without giving at least ~~ten~~ *10* days' advance notice in writing to the Commission and the Director of the Department of Environmental Quality.

§ 56-238. Suspension of proposed rates, etc.; investigation; effectiveness of rates pending investigation and subject to bond; fixing reasonable rates, etc.

The Commission, either upon complaint or on its own motion, may suspend the enforcement of any or all of the proposed rates, tolls, charges, rules or regulations for schedules required to be filed under § 56-236 of any public utility, except an investor-owned electric public utility, for a period not exceeding 150 days, or if the public utility is an investor-owned water utility not subject to Chapter 10.2:1 (§ 56-265.13:1 et seq.) for a period not exceeding 180 days, from the date of filing, and the Commission shall suspend the enforcement of all of the proposed rates, tolls, charges, rules or regulations of an investor-owned electric public utility until the Commission's final order in the proceeding, during which times the Commission shall investigate the reasonableness or justice of such proposed rates, tolls, charges, rules and regulations and thereupon fix and order substituted therefor such

rates, tolls, charges, rules and regulations as shall be just and reasonable. The Commission's final order in such a proceeding involving an investor-owned electric public utility that is filed after January 1, 2010, shall be entered not more than nine months after the date of filing, at which time the suspension period shall expire, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order. Notice of the suspension of any such proposed rate, toll, charge, rule or regulation shall be given by the Commission to the public utility, prior to the expiration of the 30 days' notice to the Commission and the public heretofore provided for. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the public utility making the filing, the proposed rates, tolls, charges, rules or regulations shall go into effect. Where increased rates, tolls or charges are thus made effective, the Commission shall, by order, require the public utility to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, and upon completion of the hearing and decision, to order such public utility to refund, with interest at a rate set by the Commission, the portion of such increased rates, tolls or charges by its decision found not justified. The Commission shall prescribe all necessary rules and regulations to effectuate the purposes of this section on or before September 1, 1980. This section shall not apply to proceedings conducted pursuant to § 56-245 ~~or 56-249.6~~.

§ 56-245.1:1. Customers to be notified about nuclear emergency evacuation plans.

At least once in every calendar year after July 1, 1980, each ~~electric public utility which~~ *power generation company that* owns, operates, or maintains a nuclear generating facility in the Commonwealth shall publish in a newspaper having general circulation within a ~~ten-mile~~ *10-mile* radius of such facility~~,~~ a statement or notice prepared or approved by the Department of Emergency Management setting forth the evacuation and other protective actions to be taken by persons or concerns located within such ~~ten-mile~~ *10-mile* radius, in the event of a nuclear radiation emergency resulting from the maintenance, operation, or failure of such nuclear facility. After the publication of the first statement or notice required hereby, subsequent statements or notices shall be published at time intervals not exceeding ~~twelve~~ *12* months. The provisions hereof shall not be effective when federal laws or regulations providing for yearly dissemination of similar information to members of the public located within a ~~ten-mile~~ *10-mile* radius of any such nuclear generating facility take effect.

§ 56-245.3. Commission to promulgate regulations and standards.

A. Notwithstanding any law to the contrary, the Commission shall promulgate regulations and standards under which any owner, operator, or manager of an apartment house, office building, shopping center, or campground, which is not individually metered for electricity or gas for each dwelling unit, nonresidential rental unit, or campsite may install submetering equipment or energy allocation equipment for the purpose of fairly allocating ~~(a)~~ *(i)* the cost of electrical or gas consumption for each dwelling unit, nonresidential rental unit, or campsite and ~~(b)~~ *(ii)* electrical or gas demand and customer charges made by the *retail electric provider or gas* utility. In addition to other appropriate safeguards for the tenant, the regulations shall require ~~(i)~~ *(a)* that an apartment house, office building, shopping center, or campground owner shall not impose on the tenant any charges, over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company to the owner, including any sales, local utility, or other taxes, if any, except that additional service charges permitted by § 55.1-1212 or 55.1-1404, as applicable, may be collected to cover administrative costs and billing, and ~~(ii)~~ *(b)* that the apartment house, office building, shopping center, or campground owner shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during reasonable business hours. The provisions of this section shall not restrict the right of the owner, operator or manager to recover in periodic lease payments the tenant's fair share of electricity or gas costs attributable to owner-paid areas and costs incurred by the owner, operator or manager in establishing and maintaining the submetering or energy allocation equipment.

B. Only for purposes of Commission enforcement of the regulations adopted under this section, the owners, operators, or managers of apartment houses, office buildings, shopping centers, or campgrounds included within the purview of this article shall be treated as public service corporations under §§ 56-5, 56-6 and 56-7. All submetering equipment shall be subject to the same regulations and standards established by the Commission for accuracy, testing, and record keeping of meters installed by electric or gas utilities and shall be subject to the meter requirements of § 56-245.1. All energy allocation equipment shall be subject to regulations and standards established by the Commission to ensure that such systems result in a reasonable determination of energy use and the resulting costs for each dwelling unit, nonresidential rental unit, or campsite. Violations of Commission regulations and orders issued under this section shall be subject to the penalty set forth in § 12.1-33.

C. In implementing this section, no apartment house, office building, shopping center, or campground shall be considered a public utility or public service corporation engaged in the business of *(i) electric*

distribution service or (ii) distributing or reselling ~~electricity or~~ gas except as provided in subsection B. The apartment house, office building, shopping center, or campground may use submetering or energy allocation equipment solely to allocate the costs of electric or gas service fairly among the tenants using the apartment house, office building, shopping center, or campground.

§ 56-247.1. Commission to require certain public utilities to follow certain procedures.

A. The Commission shall require that public utilities, *except electric utilities,* adhere to the following procedures for services not found to be competitive:

1. Every public utility shall provide its residential customers one full billing period to pay for one month's local or basic services, before initiating any proceeding against a residential customer for nonpayment of local service.

2. Pay the residential customer a fair rate of interest as determined by the Commission on money deposited and return the deposit with the interest after not more than one year of satisfactory credit has been established.

3. Every public utility shall establish customer complaint procedures which will insure prompt and effective handling of all customer inquiries, service requests and complaints. Such procedure shall be approved by the Commission before its implementation and it shall be distributed to its residential customers.

4. No ~~electric or~~ gas utility shall terminate a customer's service without 10 days' notice by mail to the customer.

5. No public utility shall terminate the residential service of a customer for such customer's nonpayment of basic nonresidential services as defined by its terms and conditions on file with the Virginia State Corporation Commission.

6. A public utility providing water service shall not terminate service for nonpayment until it first sends the customer written notice by mail 10 days in advance of making the termination but, in no event, shall it terminate the customer's service until 20 days after the customer's bill has become due. Any such notice shall also include contact information for the customer's use in contacting the public utility regarding the notice.

7. Any electric utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) may install and operate, upon a customer's request and pursuant to an appropriate tariff for any type or classification of service, a prepaid metering equipment and system that is configured to terminate electric service immediately and automatically when the customer has incurred charges for electric service equal to the customer's prepayments for such service. Subdivisions 1, 2, 4, and 5 shall not apply to services provided pursuant to electric service provided on a prepaid basis by a prepaid metering equipment and system pursuant to this subsection. Such tariffs shall be filed with the Commission for its review and determination that the tariff is not contrary to the public interest.

B. Any and all Commission rules and regulations concerning the denial of telephone service for nonpayment of such service shall not apply to services found to be competitive.

§ 56-250. Commission may authorize action by public utility in time of emergency or shortage; plans.

~~(1)~~ *A.* Whenever it shall appear by satisfactory evidence that any public utility furnishing in ~~this State power, heat, light~~ *the Commonwealth electric transmission service or distribution service,* or water cannot supply all of its customers the usual requirements of each by reason of strikes, accidents, ~~want of fuel,~~ or for any other reason, the Commission may authorize such public utility to take such action as, in the opinion of the Commission, will minimize adverse impact on the public health and safety and facilitate restoration of normal service to all customers at the earliest time practicable.

~~(2)~~ *B.* To facilitate implementation of this section, the Commission may require any such public utility to file, as a part of the rules and regulations referred to in § 56-236, its plan for curtailment of service *and communication with affected customers* in such a condition of emergency or shortage. Such plans shall be considered and shall take effect in the manner provided in this chapter for the schedules of rates and charges and rules and regulations of public utilities.

§ 56-254. Sale or lease of plants to cities or towns.

The board of directors of any public service corporation operating a gas~~, electric~~ or water plant within the limits of any city or town, or within territory contiguous thereto, is hereby authorized to sell or lease to such city or town the entire plant of such corporation, or any part thereof, including the franchises and easements of such corporation; provided the action of the board of directors be authorized or ratified by an affirmative vote of a majority in interest of the stock issued and outstanding of such corporation, unless a larger interest is required by the charter or bylaws of such corporation.

§ 56-255. Extension of electric utility service to territory not being served.

If, from any rural territory not now being served, application be made to the Commission by a group of five or more persons, natural or artificial, to require an extension of electric *utility* service to such territory, the Commission shall, if necessary to accomplish the purposes sought, fix a time for hearing such application, on such terms and conditions as the Commission may prescribe, and, if it be

established to the satisfaction of the Commission that a proper guaranteed revenue for a sufficient number of years will accrue to any company which may be required to construct the desired extension, and that a reasonable investment will accrue to the company constructing such extension, then the Commission is hereby authorized and empowered to require the nearest or most advantageously located electric utility company to such territory to construct such extension to such point or points in such territory and to serve such customer or customers therein, as in its judgment is right and proper.

§ 56-256. Powers of corporations generally; rights, powers, privileges and immunities, etc.

Every corporation organized for the purpose of: ~~(1)~~ *(i)* constructing, maintaining, and operating an electric railway, or works, ~~(2) supplying and distributing electricity for light, heat, or power, (3)~~ *(ii) providing electric utility service, (iii)* producing, distributing, and selling steam, ~~heat, or power,~~ or compressed air, ~~(4)~~ *(iv)* producing, distributing, and selling gas made of coal or other materials, ~~(5)~~ *(v)* furnishing and distributing a water supply to any city or town, ~~or (6)~~ *(vi)* piping cold air outside of its plant, or ~~(7)~~ *(vii)* constructing and maintaining any public viaduct, bridge, or conduit~~,~~ shall, in addition to the powers conferred upon corporations generally, have all the rights, powers, privileges, and immunities, and be subject to all the rules, regulations, restrictions, pains, and penalties prescribed by §§ 56-458, 56-459 to 56-462, 56-466, 56-467, and 56-484, which sections shall apply to, and as far as practicable, operate upon the corporations mentioned in this section, unless otherwise provided.

§ 56-261. Duties of companies furnishing water or sewerage facilities.

Every public service corporation engaged in the business of furnishing water or sewerage facilities to any city, incorporated town, or county having a population greater than 500 inhabitants per square mile as shown by United States census, in ~~this~~ *the* Commonwealth or to inhabitants thereof (whether or not such business is conducted under or by virtue of a municipal franchise), shall furnish at all times and at a reasonable charge a supply of water, a system of distribution or disposal and services and facilities incidental to such supply, distribution or disposal sufficient and adequate to the protection of the health of such inhabitants and to the public health of the community, and any such water company shall furnish a supply of water adequate for proper fire protection within such city or town or such county and the adjacent territory served by the mains of such corporation. Each person operating a sewerage system which includes one or more sewage treatment plants shall notify in writing~~,~~ the Commission, the Director of the Department of Environmental Quality ~~and~~, each ~~electric or~~ natural gas utility supplying or distributing energy to such system, *and each electric utility or retail electric provider serving such system* that ~~such~~ *the* system includes a sewage treatment plant.

§ 56-265.1. Definitions.

~~In~~ *As used in* this chapter ~~the following terms shall have the following meanings~~ *unless the context requires a different meaning*:

~~(a)~~ "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or county has obtained a certificate pursuant to § 56-265.4:4 *or furnishes electric transmission or distribution service*.

"Geothermal resource" has the same meaning ascribed thereto in § 45.1-179.2.

~~(b)~~ "Public utility" means any company that owns or operates facilities within the Commonwealth ~~of Virginia~~ for ~~the generation, transmission, storage, or distribution of electric energy for sale, for~~ *(i)* the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat~~, light or power, or for~~*; (ii)* the furnishing of telephone service, sewerage facilities, or water*; or (iii) the furnishing of electric transmission or distribution service*. ~~As used in this definition, a facility for the storage of electric energy for sale includes one or more pumped hydroelectricity generation and storage facilities located in the coalfield region of Virginia as described in § 15.2-6002.~~ However, the term "public utility" does not include any of the following:

~~(1)~~ *1.* Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities, geothermal resources or water to less than 50 customers. Any company furnishing water or sewer services to 10 or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

~~(2) Any company generating and distributing electric energy exclusively for its own consumption.~~

~~(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for~~

~~electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.~~

~~(4)~~ *2.* Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, or to certain public schools as indicated in this subdivision, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § 56-265.4:5. Direct sales or ancillary transmission or delivery services of natural gas to public schools in the following localities may be made without regard to the number of schools involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

~~(5)~~ *3.* Any company which is not a public service corporation and which provides compressed natural gas service at retail for the public.

~~(6)~~ *4.* Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

~~(7)~~ *5.* Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or industrial customer from a solid waste management facility permitted by the Department of Environmental Quality and operated by that same authority, if such an authority limits off-premises sale, transmission or delivery service of landfill gas to no more than one purchaser. The authority may contract with other persons for the construction and operation of facilities necessary or convenient to the sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility, the public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover the cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

~~(8)~~ *6.* A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than three commercial or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If a purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within 60 days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

~~(9)~~ *7.* A company that is not organized as a public service company pursuant to subsection D of § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and enforcement.

~~(10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i) "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural operations and produces the agricultural waste used as feedstock for the waste-to-energy technology, (ii) "agricultural waste" means biomass waste materials capable of decomposition that are produced from the raising of plants and animals during agricultural operations, including animal manures, bedding, plant stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means any technology, including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat that is used to generate electricity on-site.~~

~~(11)~~ *8.* A company, other than an entity organized as a public service company, that provides non-utility gas service as provided in § 56-265.4:6.

~~(12) A company, other than an entity organized as a public service company, that provides storage of electric energy that is not for sale to the public.~~

~~(c) "Commission" means the State Corporation Commission.~~

~~(d) "Geothermal resources" means those resources as defined in § 45.1-179.2.~~

§ 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new facilities.

A. ~~1.~~ Subject to the provisions of ~~subdivision 2~~ *subsection B*, it shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business, without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege. Any certificate required by this section shall be issued by the Commission only after opportunity for a hearing and after due notice to interested parties. The certificate for overhead electrical transmission lines of 138 kilovolts or more shall be issued by the Commission only after compliance with the provisions of § 56-46.1.

~~2.~~ *B.* For construction of any transmission line of 138 kilovolts and associated facilities, a public utility shall either (i) obtain a certificate pursuant to ~~subdivision 1~~ *subsection A* or (ii) obtain approval pursuant to the requirements of (a) § 15.2-2232 and (b) any applicable local zoning ordinances by the locality or localities in which the transmission line will be located. Issuance by the Commission of a certificate pursuant to ~~subdivision 1~~ *subsection A* approving construction of a 138 kilovolt transmission line and any associated facilities shall be deemed to satisfy the requirements of § 15.2-2232 and all local zoning ordinances with respect to the transmission line and its associated facilities. For purposes of this ~~subdivision~~ *subsection*, "associated facilities" include any station, substation, transition station, and switchyard facilities to be constructed outside of any county operating under the county executive form of government that is located in Planning District 8 in association with a 138 kilovolt transmission line.

~~B. In exercising its authority under this section, the Commission, notwithstanding the provisions of § 56-265.4, may permit the construction and operation of electrical generating facilities, which shall not be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10 (§ 56-232 et seq.), upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not otherwise contrary to the public interest. In review of its 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, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1. Facilities authorized by a certificate issued pursuant to this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ 56-232 et seq.).~~

C. A map showing the location of any proposed ordinary extension or improvement outside of the territory in which the public utility is lawfully authorized to operate shall be filed with the Commission, and prior notice of such ordinary extension shall be given to the public utility or other entity authorized to provide the same utility service within said territory. Ordinary extensions outside the service territory of a public utility shall be undertaken only for use in providing its public utility service and shall be constructed and operated so as not to interfere with the service or facilities of any public utility or other entity authorized to provide utility service within any other territory. If, upon objection of the affected

utility or entity filed within 30 days of the aforesaid notice and after investigation and opportunity for a hearing the Commission finds an ordinary extension would not comply with this section, it may alter or amend the plan for such activity or prohibit its construction.

D. Whenever a certificate is required under this section for a pipeline for the transmission or distribution of natural or manufactured gas, the Commission may issue such a certificate only after compliance with the provisions of § 56-265.2:1. As used in this section and § 56-265.2:1, "pipeline for the transmission or distribution of manufactured or natural gas" shall include the pipeline and any related facilities incidental or necessary to the operation of the pipeline.

E. This section shall be subject to the requirements of § 56-265.3, if any, and nothing herein shall be construed to supersede § 56-265.3.

§ 56-265.3. Certificate to furnish public utility service; allotment of territory transfers, leases or amendments.

A. No public utility shall begin to furnish public utility service within the Commonwealth without first having obtained from the Commission a certificate of public convenience and necessity authorizing it to furnish such service. Any company engaged in furnishing a public utility service in ~~this~~ *the* Commonwealth as of July 1, 1950, shall, upon filing maps with the Commission within ~~ninety~~ *90* days from such date, showing the territory now being served by it, be entitled to receive a certificate of convenience and necessity authorizing it to begin to furnish such public utility service in such territory. Also, any company that is granted authority under the Public Utilities Securities Act, Chapter 3 (§ 56-55 et seq.) ~~of this title~~ to issue securities for the purpose of constructing or extending facilities described in the application for such authority, shall, if the application was filed with the ~~State Corporation~~ Commission before February 1, 1950, have the same right to a certificate of convenience and necessity that it would have had if the facilities had been in operation and serving the public on February 1, 1950. Any company which was engaged in furnishing a public utility service in ~~this~~ *the* Commonwealth as of July 1, 1950, and which is now so engaged in providing the same kind of service, and which could have filed maps with the Commission in accordance with the requirements of this section but failed to do so, may file such maps not later than January 1, 1974, showing the territory now being served by it, and be entitled to receive a certificate of convenience and necessity authorizing it to continue to furnish the same kind of public utility service in such areas to the same extent as if it had filed maps as of July 1, 1950. *Any municipal corporation, municipal electric authority, or county engaged in furnishing electric transmission or distribution service in the Commonwealth before January 1, 2019, shall, upon filing maps with the Commission within 90 days from such date, showing the territory now being served by it, be entitled to receive a certificate of convenience and necessity authorizing it to begin to furnish such electric transmission or distribution utility service in such territory.*

B. On initial application by any company, the Commission, after formal or informal hearing upon such notice to the public as the Commission may prescribe, may, by issuance of a certificate of convenience and necessity, allot territory for development of public utility service by the applicant if the Commission finds such action in the public interest.

C. If the initial application provides for the furnishing of water or sewerage service within any political subdivision in which there has been created an authority for either or both of such purposes pursuant to Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2, the Commission shall not hold any hearing on such application or issue any certificate for the allotment of territory unless the application shall first have been approved by the governing body of the political subdivision in which the territory is located. In any area where a water company was in existence and furnishing water prior to the formation of an authority to provide water, the Commission may hold a hearing on an application and issue a certificate to the water company for that territory which was served prior to the creation of the authority whether or not the governing body of the political subdivision has approved the application. In any area where a sewer company was in existence and furnishing sewer services prior to the formation of an authority to provide sewer services, the Commission may hold a hearing on an application and issue a certificate to the sewer company for that territory which was served prior to the creation of the authority whether or not the governing body of the political subdivision has approved the application.

D. If the Commission finds it to be in the public interest, upon the application of a holder of a water or sewer certificate, such certificate may be transferred, leased or amended after such reasonable notice to the public and opportunity to be heard as the Commission by order may prescribe. The Commission may authorize the transfer, lease, or amendment of the certificate subject to such restrictions as the Commission finds will promote the public interest.

E. The Commission is authorized to promulgate any rules necessary to implement this section.

§ 56-265.4:1. Furnishing of electric public utility service or provision of facilities therefor by municipal corporations and other governmental bodies.

If any municipal corporation or other governmental body, having legal authority by charter or other law, shall desire to supply electric public utility service, or construct, enlarge or acquire, by lease or otherwise, any electric utility facilities, outside its political boundaries, it shall have power to enter into

agreements in that regard with affected public utilities which shall be binding in accordance with their terms and for the period therein provided; but no contract entered into under this section shall limit the power of the Commission to fix rates and to otherwise regulate a public utility. No such service by a municipal corporation or other governmental body shall be provided, or facilities constructed, enlarged or acquired, in territory allotted to any public utility by the Commission except in territory served by such municipal corporation or other governmental body on June 26, 1964, unless the affected public utility shall consent by such an agreement or the Commission shall grant a certificate therefor upon application by the municipal corporation or other governmental body pursuant to § 56-265.4, authority for which certification is hereby granted. Provided, however, this limitation on the extension of public utility service by any municipal corporation or governmental body outside its political boundaries shall not be applicable to cities or towns extending their service in accordance with the provisions of § 56-265.4:2. No public utility shall extend its electric public utility service, or construct, enlarge or acquire, by lease or otherwise, any electric utility facilities, in territory served exclusively by a municipal corporation or other governmental body on June 26, 1964, unless such municipal corporation or other governmental body shall consent by such an agreement. In case of question as to the scope of the territory served by a municipal corporation or other governmental body on June 26, 1964, the Commission may, and on application by either such public utility or such municipal corporation or other governmental body shall, decide such question and allot such territory accordingly, between such public utility and such municipal corporation or other governmental body, in which event any expansion of service outside the territory so allotted shall be subject to the applicable provisions of this chapter~~, provided, however, that nothing contained herein shall prevent any municipal corporation from constructing or maintaining facilities in county areas for the purpose of generating or purchasing electricity to be transmitted into the service area of such municipal corporation~~.

§ 56-265.4:2. Extension of service by cities and towns into annexed areas.

A. Any city or town in the Commonwealth ~~which~~ *that* provides electric ~~utility~~ *transmission or distribution* service for the use of its residents may, at any time following annexation of additional territory to such city or town, acquire the *electric transmission and* distribution *utility* system facilities of the electric *transmission and distribution* utility serving the annexed area in the manner provided by Title 25.1. As used in this section, (i) the term "*electric transmission and* distribution *utility* system facilities" shall be deemed to include all facilities necessary to ~~distribute~~ *provide* electric ~~utility~~ *transmission and distribution* service to any annexed area but shall not include substations of the public utility whose facilities are being acquired, and (ii) the terms "city" and "town" shall not include a shire, a borough or any other subdivision of a city or town. This section shall not apply to the addition of territory to a city or town by consolidation, merger, or through any other procedure that results in an effective combination with another governmental entity.

B. Upon completion of the eminent domain proceedings or upon the negotiation of a settlement between the city or town and the electric *transmission and distribution* utility, the ~~State Corporation~~ Commission shall amend the certificate of convenience and necessity of the public utility whose *electric transmission and* distribution *utility* system facilities have been acquired to reflect the change in its territory.

§ 56-265.4:5. Furnishing gas service to commercial and industrial customers in an area not certificated for public utility gas service.

A. Any company desiring to make an exempt sale, transmission or service under subdivision ~~(b) (4)~~ *2* of *the definition of public utility in* § 56-265.1 shall notify the Commission of its plans for furnishing such gas service. The Commission shall make a determination of whether the customers' facilities are located within a territory for which a certificate has been granted, or, as of the time of the Commission's receipt of the notice provided hereunder, within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, and shall prohibit the furnishing of gas service to any facility so located. The Commission shall provide notice of such plans to furnish gas service to all public utilities providing gas service in the Commonwealth. Within ~~sixty~~ *60* days of such notice, any public utility so notified may make application to the Commission to provide such service. If an application is filed, the Commission shall determine, after a public hearing, which company shall furnish the gas service.

B. In the event a gas utility is issued a certificate to serve the area where customers to whom service is being provided pursuant to this section are located, the gas utility shall have the right, subject to existing contracts regarding gas service to such customers and to the gas utility's effective transportation tariff, to acquire any facilities installed to serve such customers, at a price to be mutually agreed upon, or if not so agreed, at a price to be determined by the Commission.

§ 56-265.8:1. Inspection and approval of certain installations not regulated pursuant to this chapter.

The owner or operator of any facility for the generation of electrical energy not subject to regulation

under the Utilities Facilities Act but designed to generate electrical energy for the use by persons other than the owner or operator shall at his expense have the facility designed and inspected by a professional engineer licensed to work in the ~~State of Virginia~~ *Commonwealth*. Said engineer shall certify that the installation meets the standards of the National Electrical Code and the National Safety Code and that there is adequate equipment for standby purposes. The provisions of this section shall apply only to generation facilities used as a primary source of power and not to emergency supply systems. ~~The provisions hereof shall not apply to municipally owned and operated facilities.~~

§ 56-466.2. Undergrounding existing overhead distribution lines; relocation of facilities of cable operator.

When an ~~investor-owned incumbent~~ electric *transmission and distribution* utility ~~proposes~~ *has been authorized* to improve electric service reliability ~~pursuant to clause (iv) of subdivision A 6 of § 56-585.1~~ by installing new underground facilities to replace the utility's existing overhead distribution tap lines, if the utility owns the poles from which the existing overhead distribution tap lines are to be relocated and any cable operator of a cable television system, as those terms are defined in § 15.2-2108.19, has also attached its facilities to such poles, the utility shall provide written notice to the cable operator of the utility's intention to relocate the overhead distribution tap lines not less than 90 days prior to relocating the utility's overhead distribution lines. The cable operator shall notify the utility within 45 days of the notice of relocation whether the cable operator will relocate its facilities underground or request to remain overhead in accordance with the provisions set forth herein. If the cable operator elects to relocate its facilities underground, in such notice the cable operator may request that the utility use commercially reasonable efforts to negotiate a common shared underground easement for the facilities to be located underground of the utility and the cable operator. The cable operator shall be responsible to negotiate any additional easements that it may require. If the cable operator elects to relocate its facilities underground, the cable operator may participate with the utility in a joint relocation of the overhead lines to underground or may engage its own contractors to undertake its relocation work if it deems it appropriate to do so. The utility shall not abandon or remove the poles that the utility owns until the cable operator completes the relocation or removal of its facilities or 90 days after the completion of the relocation of the utility overhead distribution lines, whichever first occurs. If the cable operator does not elect to relocate its facilities underground and requests to maintain its facilities overhead, the utility may either (i) convey such poles "as-is" and "where-is" to the cable operator at its depreciated cost less the estimated cost of removal, provided that the cable operator may legally retain the poles that the utility intends to abandon and assumes all liability for the poles conveyed or (ii) retain ownership of its poles and allow the cable operator's existing overhead facilities to remain attached, in which case the utility shall maintain the pole in accordance with prudent utility standards, provided that the cable operator shall continue to pay its pole attachment fees and otherwise comply with its contractual obligations pursuant to the applicable pole attachment agreement. In all cases, the cable operator shall be responsible for all costs related to the relocation or maintenance of its facilities.

In instances in which an investor-owned incumbent electric utility continues to own and maintain its utility poles after the overhead distribution lines of the utility formerly on such poles have been placed underground pursuant to the foregoing provisions, then for purposes of any agreement or ordinance with respect to a cable franchise under § 15.2-2108.20 or 15.2-2108.21, the utility shall not be deemed to have converted to underground.

CHAPTER 29.
VIRGINIA ENERGY REFORM ACT.

§ 56-614. Definitions.

As used in this chapter, unless the context requires a different meaning:

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

"Aggregation" means (i) the purchase of electricity from a retail electric provider by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load, or (ii) the purchase of electricity by an electricity customer from a retail electric provider as part of a voluntary association of electricity customers, provided that a retail electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load.

"Aggregator" means a person joining two or more customers into a single purchasing unit to negotiate the purchase of electricity from retail electric providers.

"Cooperative" means a utility formed under or subject to Chapter 9.1 (§ 56-232.15 et seq.).

"Customer choice" means the freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods

of congestion and higher prices in the electrical grid.

"Distribute" electricity means the transfer of electricity through a retail distribution system to a retail customer.

"Electric transmission and distribution utility" means any person that (i) transmits or distributes electricity to a retail electricity provider for use by retail customers in the Commonwealth; (ii) is a corporation, cooperative, municipality, or municipal electric authority; (iii) does not generate electricity; and (iv) does not sell electricity to retail customers.

"Generate," "generating," or "generation of" electricity means the production of electricity.

"Incumbent electric utility" means any person that, prior to January 1, 2019, generated, transmitted, or distributed electricity for use by retail customers in an exclusive service territory of the Commonwealth established by the Commission.

"Independent distribution system operator" means an entity supervising the collective distribution facilities that is charged with nondiscriminatory coordination of system and market operations with the regional transmission organization, systemwide distribution planning, interconnection of distributed energy resources, and network reliability.

"Installed generation capacity" means all potentially marketable electric generation capacity, including the capacity of (i) generating facilities that are connected with a transmission or distribution system, (ii) generating facilities used to generate electricity for consumption by the person owning or controlling the facility, and (iii) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

"Municipal electric authority" means an electric authority created by a municipality under Chapter 54 (§ 15.2-5400 et seq.) of Title 15.2.

"Municipality" means a city, county, town, authority, or other political subdivision of 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 or municipal electric authority.

"Power generation company" means a person owning, controlling, or operating a facility in the Commonwealth that produces electricity for sale.

"Power region" means a contiguous geographical or electrical area that is a distinct region that the Federal Energy Regulatory Commission recognizes as a regional transmission organization.

"Regional transmission organization" means an entity supervising the collective transmission facilities of a power region that is charged with nondiscriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

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

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

"Retail electric provider" means a person that sells electricity to retail customers in the Commonwealth.

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

§ 56-615. Unbundling.

A. Not later than September 1, 2021, each incumbent electric utility shall separate from its regulated utility activities its customer energy services business activities that are otherwise also already widely available in the competitive market.

B. Not later than January 1, 2022, each incumbent electric utility shall separate its business activities from one another into the following units:

1. An electric transmission and distribution utility;

2. A power generation company; and

3. A retail electric provider.

An incumbent electric utility may separate its business activities into a single electric transmission and distribution utility.

C. An electric utility shall accomplish the separation required by subsection B either:

1. By the creation of separate investor-owned companies, cooperatives, or municipal electric authorities; or

2. Through the sale of assets to a third party.

D. An electric transmission and distribution utility or electric transmission utility shall not be an affiliate of any person that:

1. Owns, controls, or operates a facility that produces electricity for sale within the same power region as the utility; or

2. Sells electricity to retail customers within the same power region as the utility.

E. Each incumbent electric utility shall file with the Commission a plan to implement this section by January 10, 2021.

F. The Commission shall adopt an incumbent electric utility's plan for business separation required by subsection B, adopt the plan with changes, or reject the plan and require the incumbent electric utility to file a new plan.

G. Transactions by incumbent electric utilities involving sales, transfers, or other disposition of assets to accomplish the purposes of this section are not subject to Chapter 5 (§ 56-88 et seq.).

§ 56-616. Customer safeguards.

A. By June 30, 2021, the Commission shall ensure that retail customer protections are established that entitle a retail customer:

1. To safe, reliable, and reasonably priced electricity, including protection against service disconnections in an extreme weather emergency as provided by subsection G or in cases of medical emergency or nonpayment for unrelated services;

2. To privacy of customer consumption and credit information;

3. To bills presented in a clear format and in language readily understandable by customers;

4. To have all electric services on a single bill;

5. To protection from discrimination on the basis of race, color, sex, nationality, religion, income, or marital status;

6. To accuracy of metering and billing;

7. To information in English and Spanish and any other language as necessary concerning rates, key terms, and conditions, in a standard format that will permit comparisons between price and service offerings;

8. To information in English and Spanish and any other language as necessary concerning low-income assistance programs and deferred payment plans; and

9. To other information or protections necessary to ensure high-quality service to customers.

B. A customer is entitled:

1. To be informed about rights and opportunities in the transition to a competitive electric industry;

2. To choose the customer's retail electric provider consistent with this chapter, to have that choice honored, and to assume that the customer's chosen provider will not be changed without the customer's informed consent;

3. To have access to providers of energy efficiency services, to on-site distributed generation, and to providers of energy generated by renewable energy resources;

4. To be served by a provider of last resort that offers a Commission-approved standard service package tied to the wholesale market prices and conditions in place at the time;

5. To receive sufficient information to make an informed choice of retail electric provider;

6. To be protected from unfair, misleading, or deceptive practices, including protection from being billed for services that were not authorized or provided; and

7. To have an impartial and prompt resolution of disputes with its chosen retail electric provider.

C. A retail electric provider or aggregator may not refuse to provide retail electric service or otherwise discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, income, disability, or familial status. A retail electric provider or aggregator may not refuse to provide retail electric service to a customer because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services based on federal and state eligibility guidelines for low-income weatherization assistance programs. The Commission shall require a provider to comply with this subsection as a condition of certification or registration.

D. A retail electric provider or aggregator shall submit reports to the Commission annually and on request relating to the person's compliance with this section. The Commission by rule shall specify the form in which a report must be submitted. A report shall include:

1. Information regarding the extent of the person's coverage;

2. Information regarding the service provided, compiled by zip code and census tract; and

3. Any other information the Commission considers relevant to determine compliance.

E. The Commission may adopt and enforce such rules as may be necessary or appropriate to carry out subsections A through D, including rules for minimum service standards for a retail electric provider relating to customer deposits and the extension of credit, switching fees, levelized billing programs, interconnection and use of on-site generation, termination of service, and quality of service. The Commission has jurisdiction over retail electric providers and aggregators in enforcing subsections A through D and may assess civil and administrative penalties under Chapter 3 (§ 12.1-12 et seq.) of Title 12.1.

F. By June 30, 2021, the Commission shall modify its current rules regarding customer protections to ensure that at least the same level of customer protection against potential abuses and the same quality of service that exists on December 31, 2019, is maintained in a restructured electric industry.

G. A retail electric provider may not disconnect service to a residential customer during an extreme weather emergency, between the hours of 10:00 p.m. and 8:00 a.m., or on a weekend day. The entity providing service shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and shall work with customers to establish a pay schedule for deferred bills. For purposes of this subsection, "extreme weather emergency" means a period when:

1. The previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports; or

2. The National Weather Service issues a heat advisory for any county in the relevant service territory, or when such an advisory has been issued on any one of the previous two calendar days.

§ 56-617. Retail electricity customer choice.

A. Each retail customer in the Commonwealth shall have customer choice by January 1, 2022.

B. A retail electric provider separated from an incumbent electric utility under § 56-615 that is serving a retail customer on December 31, 2021, may continue to serve that customer until the customer chooses service from a different retail electric provider. For purposes of this chapter, such a retail electric provider is an incumbent retail electric provider.

§ 56-618. Commission authority to delay competition and set new rates.

If the Commission determines under § 56-619 that a region served by an incumbent electric utility is unable to offer fair competition and reliable service to all retail customer classes on January 1, 2022, the Commission shall delay customer choice for the region and may on or after January 1, 2022, establish new rates for the incumbent electric utility as provided by Chapter 10 (§ 56-232 et seq.). Any such delay shall not exceed 12 months. If the Commission delays competition under this section, it shall submit a report to the General Assembly describing the Commission's action and the reasons for it, with a recommendation for any additional legislation that would facilitate the start of retail competition.

§ 56-619. Customer choice pilot projects.

A. Customer choice pilot projects may be used to allow the Commission to evaluate the ability of each region served by an incumbent electric utility to implement customer choice.

B. The Commission shall require each incumbent electric utility to offer customer choice in its service area within the Commonwealth amounting to five percent of the utility's combined load of all customer classes within the Commonwealth beginning on June 1, 2021.

C. The load designated for customer choice under this section shall be distributed among all customer classes of a utility consistent with the purpose of this section and subject to Commission approval.

D. Customers participating in a pilot project under this section may buy electric energy from any retail electric provider certified by the Commission under § 56-633, including incumbent retail electric providers; however, an incumbent retail electric provider may not participate in a pilot project in the certificated service area served by the incumbent electric utility from which it separated.

E. The Commission may prescribe reporting requirements it considers necessary to evaluate a pilot project consistent with the purpose of this section.

F. Customers having customer choice under this section shall be billed as provided by § 56-622.

G. The Commission may prescribe terms and conditions it considers necessary to prohibit anticompetitive practices and to encourage customer choice offered under this section.

§ 56-620. Limitation on sale of electricity.

After January 1, 2022, an incumbent electric utility may not sell electricity or otherwise participate in the market for electricity except:

1. For the purpose of buying electricity to serve its own needs; or

2. While competition for the region served by the utility is delayed under § 56-618.

§ 56-621. Provider of last resort.

A. The Commission shall designate retail electric providers in areas of the Commonwealth in which customer choice is in effect to serve as providers of last resort.

B. A provider of last resort:

1. Shall offer a customer retail service at a rate approved by the Commission; and

2. May file with the Commission a request for approval to increase the rates authorized by subdivision 1 as needed to reflect an increase in wholesale energy costs or fuel prices.

C. A provider of last resort shall provide the retail service required by subsection B to a customer in the territory for which it is the provider of last resort, in accordance with a rule, tariff, or order adopted by the Commission.

D. The Commission shall designate the provider or providers of last resort not later than June 1, 2021.

E. The Commission shall determine the procedures and criteria, which may include the solicitation of

bids, for designating a provider or providers of last resort. The Commission may redesignate the provider of last resort according to a schedule it considers appropriate.

F. If no retail electric provider applies to be the provider of last resort for a given area of the Commonwealth on reasonable terms and conditions, the Commission may require a retail electric provider to become the provider of last resort as a condition of receiving or maintaining a certificate under § 56-633.

G. If a retail electric provider fails to serve any or all of its customers, the provider of last resort shall offer that customer the retail service required under subsection B for that customer class with no interruption of service to any customer.

§ 56-622. Metering and billing services.

A. On introduction of customer choice in a region served by an incumbent electric utility, metering services for the area shall continue to be provided by the incumbent electric utility or the electric transmission and distribution utility separated from the incumbent electric utility in that area.

B. Metering and billing services provided to residential customers shall be governed by the customer safeguards adopted by the Commission under § 56-616. All meter data, historical load data, and other proprietary customer information, including all data generated, provided, or otherwise made available by advanced meters and meter information networks, shall belong to the customer, but such data shall be used to calculate charges for service and for normal utility operations, including forecasting future load. A customer may authorize its data to be provided to one or more retail electric providers and to other persons under rules and charges established by the Commission.

C. Beginning on the date of introduction of customer choice in a region served by an incumbent electric utility, the electric transmission and distribution utility providing the customer's energy requirements shall bill a customer's retail electric provider for non-bypassable delivery charges as determined under § 56-628. The retail electric provider shall pay these charges and have the responsibility for billing the customer for them.

D. An electric transmission and distribution utility shall deploy advanced metering and meter information networks for all of its residential customers and nonresidential customers within three years after the start date of customer choice in the area where the customer is served.

E. The Commission shall establish a non-bypassable surcharge for an electric transmission and distribution utility to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers. The expenses shall be allocated to the customer classes receiving the services.

§ 56-623. Notice of expiration and price change.

A. As used in this section, "fixed rate product" means a retail electric provider product with a term of at least three months for which the price for each billing period, including recurring charges, does not change throughout the term of the contract, except that the price may vary to reflect actual changes in electric transmission and distribution utility charges, changes to the independent distribution system operator rates or fees charged to loads, or changes to federal, state, or local laws that result in new or modified fees or costs that are not within the retail electric provider's control.

B. A retail electric provider shall provide a residential customer who has a fixed rate product with at least one written notice of the date the fixed rate product will expire. The notice shall:

1. Be sent to the customer's billing address by mail at least 30, but not more than 60, days preceding the date the contract will expire;

2. Be sent to the customer's email address, if available to the provider and if the customer has agreed to receive notices electronically, at least 30 days but not more than 60 days preceding the date the contract will expire;

3. Include, on the outside of the envelope in which the notice is sent, a statement that reads: "Contract Expiration Notice. See Enclosed.";

4. If included with a customer's bill, be printed on a separate page; and

5. Include a description of any fees or charges associated with the early termination of the customer's fixed rate product.

C. A retail electric provider shall include on each billing statement the end date of the fixed rate product.

D. No provision in this section shall be construed to prohibit the Commission from adopting rules that would provide a greater degree of customer protection.

§ 56-624. Independent distribution system operator.

A. The Commission shall establish a single independent distribution system operator by March 1, 2021, to perform the following functions in the Commonwealth:

1. Operate and plan the distribution systems of all electric transmission and distribution utilities;

2. Ensure open access to the distribution systems for all buyers and sellers of electricity on nondiscriminatory terms;

3. Transmit and calculate the extension of wholesale electricity market prices down into the

distribution system by time and location to account for any distribution constraints and line losses in moving electricity through the distribution system to end-use customers;

4. Track the location, capacity, and operating output of distributed electricity resources, including small-scale generation, demand response, and energy storage, that are within the distribution system. The independent distribution system operator shall aggregate these values up to the nearest interface between the distribution system and the transmission system operated by a regional transmission organization;

5. For all electric distribution systems within the Commonwealth, serve as the:

a. Manager and coordinator for the transmission and storage of electric distribution system meter data; and

b. Repository for meter data and retail electric provider data on the relationships between customers and retail electric providers;

6. Ensure the short-term and long-term reliability and adequacy of the distribution electrical network;

7. Ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information;

8. File (i) rate cases for the open-access rates of transmission and distribution utilities and (ii) proposed generic electric utility rate designs for the Commonwealth; and

9. Ensure that customers are expeditiously transferred to a provider of last resort if their retail electric provider is no longer able to provide service.

B. An independent distribution system operator shall not be a person, or an affiliate of any person, that:

1. Sells electricity;

2. Transmits or distributes electricity; or

3. Owns, controls, or operates a facility that produces electricity for sale.

C. The Commission shall adopt and enforce rules relating to the reliability of the electrical distribution network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to the independent distribution system operator responsibilities for establishing or enforcing such rules. Any such rules adopted by the independent distribution system operator and any enforcement actions taken by the operator are subject to Commission oversight and review. The independent distribution system is directly responsible and accountable to the Commission. The Commission has complete authority to oversee and investigate the independent distribution system operator's finances, budget, and operations as necessary to ensure the operator's accountability and to ensure that the operator adequately performs the operator's functions and duties. The independent distribution system operator shall fully cooperate with the Commission in the Commission's oversight and investigatory functions.

D. The Commission shall require the independent distribution system operator to submit to the Commission the operator's entire proposed annual budget. The Commission shall review the proposed budgets either annually or biennially and may approve, disapprove, or modify any item included in a proposed budget. The Commission by rule shall establish the type of information or documents needed to effectively evaluate the proposed budget and reasonable dates for the submission of that information or those documents. The Commission shall establish a procedure to provide public notice of and public participation in the budget review process.

E. Except as otherwise agreed to by the Commission and the independent distribution system operator, the operator shall submit to the Commission for review and approval proposals for obtaining debt financing or for refinancing existing debt. The Commission may approve, disapprove, or modify a proposal.

F. The Commission may:

1. Require the independent distribution system operator to provide reports and information relating to the independent distribution system operator's performance of the functions prescribed by this section and relating to the operator's revenues, expenses, and other financial matters;

2. Prescribe a system of accounts for the independent distribution system operator;

3. Conduct audits of the independent distribution system operator's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters, and may require the independent operator to conduct such an audit; and

4. Inspect the independent distribution system operator's facilities, records, and accounts during reasonable hours and after reasonable notice to the operator.

G. After approving the budget of the independent distribution system operator under subsection D, the Commission shall authorize the operator to charge to retail electric providers a rate or fee, within a range determined by the Commission, that is reasonable and competitively neutral to fund the independent distribution system operator's approved budget.

H. The review and approval of a proposed budget under subsection D or a proceeding to authorize and set the range for the amount of a fee under subsection G is not a contested case for purposes of Chapter 5 (§ 12.1-25 et seq.) of Title 12.1.

I. The Commission shall select the members of the operator's governing body. The governing body shall be composed of (i) the chief executive officer of the independent distribution system operator as an ex officio voting member and (ii) six members unaffiliated with any market segment and without any direct financial interest in any market segment. After the initial governing members are selected, the governing body members shall serve three-year terms. The Commission may stagger the terms of the initial governing body members, up to a maximum term of five years. The governing body shall adopt bylaws, which shall become effective upon Commission approval.

J. After the independent distribution system operator obtains approval from the Commission, each electric transmission and distribution utility shall join the certified independent distribution system operator not later than 90 days after it receives notification of the Commission's action and shall transfer the management and control of its distribution system assets to the operator on the date specified in the Commission's order.

K. A retail electric provider, distributed generator, or electric transmission and distribution utility shall observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent distribution system operator. Failure to comply with this subsection may result in:

1. The revocation, suspension, or amendment of a certificate as provided by § 56-265.6 or 56-635; and

2. The imposition of a penalty as provided by § 56-265.6 or 56-636.

§ 56-625. Commission assessment of market power.

A. Each person that owns generation facilities and offers electricity for sale in the Commonwealth shall report to the Commission its installed generation capacity, the total amount of capacity available for sale to others, the total amount of capacity under contract to others, the total amount of capacity dedicated to its own use, its annual wholesale power sales in the Commonwealth, its annual retail power sales in the Commonwealth, and any other information necessary for the Commission to assess market power or the development of a competitive retail market in the Commonwealth. The Commission shall by rule prescribe the nature and detail of the reporting requirements and shall administer those reporting requirements in a manner that ensures the confidentiality of competitively sensitive information.

B. The independent distribution system operator shall submit an annual report to the Commission identifying existing and potential transmission and distribution constraints and system needs within the Commonwealth, alternatives for meeting system needs, and recommendations for meeting system needs. The first report shall be submitted on or before September 1, 2022. Subsequent reports shall be submitted by January 15 of each year thereafter or as determined necessary by the Commission.

§ 56-626. Commission authority to address market power.

A. The Commission shall monitor market power associated with the transmission, distribution, and sale of electricity in the Commonwealth. On a finding that market power abuses or other violations of this section are occurring, the Commission shall require reasonable mitigation of the market power by ordering the construction of additional transmission or distribution facilities, by seeking an injunction or penalties as necessary to eliminate or to remedy the market power abuse or violation, by ordering the disgorgement of excess revenue, or by suspending, revoking, or amending a certificate or registration as authorized by § 56-265.6 or 56-635. For purposes of this chapter, "market power abuses" are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. For purposes of this section, "market power abuses" include predatory pricing, withholding of production, precluding entry, and collusion. The possession of a high market share in a market open to competition may not, of itself, be deemed to be an abuse of market power; however, this subsection shall not affect the application of state and federal antitrust laws.

B. Following review of the annual report submitted to it under subsection B of § 56-625, the Commission shall determine whether specific transmission or distribution constraints or bottlenecks within the Commonwealth give rise to market power in specific geographic markets in the Commonwealth. The Commission, on a finding that specific transmission or distribution constraints or bottlenecks within the Commonwealth give rise to market power, may order reasonable mitigation of that potential market power by ordering one or more electric transmission and distribution utilities to construct additional transmission or distribution capacity, or both, subject to the certification provisions of this title.

§ 56-627. No immunity from antitrust laws.

Nothing in this chapter shall be construed to confer immunity from state or federal antitrust laws.

This chapter is intended to complement other state and federal antitrust provisions. Therefore, antitrust remedies may also be sought in state or federal court to remedy anticompetitive activities.

§ 56-628. Cost of service tariffs and charges.

A. For purposes of this section, "electric utility" means an electric transmission and distribution utility.

B. The independent distribution system operator shall, on or before July 1, 2020, file with the Commission a proposed generic utility rate design and proposed generic utility customer classes. The Commission shall, on or before October 1, 2020, establish:

1. A generic utility rate design for all electric utilities in the Commonwealth; and

2. Generic electric utility customer classes for the Commonwealth.

C. Each electric utility shall, on or before January 1, 2021, file proposed tariffs for its proposed utility for open-access distribution service. The filing under this subsection shall include supporting cost data for determination of nonbypassable delivery charges, which shall be the sum of:

1. Electric utility charges by customer class based on a forecasted 2022 test year and the generic customer classes and generic rate design established by the Commission pursuant to this section; and

2. A system benefit fund fee.

D. Each electric utility shall also identify the unbundled generation and retail energy service costs by customer class.

E. Each electric utility shall include in its filing under subsection C terms and conditions for open-access distribution service, based on the standard terms and conditions established by the Commission.

F. In accordance with a schedule and procedures it establishes, the Commission shall hold a hearing and approve or modify and make effective as of January 1, 2022, the electric utility's proposed tariffs for electric utility services and the system benefit fund fee.

G. The rates established under this section shall reflect the following principles:

1. The rates shall afford the utility a reasonable opportunity to recover its reasonable costs and a reasonable rate of return; and

2. The rates shall fairly allocate the utility's costs among customers.

H. The system benefit fund fee shall be that established by the Commission under § 56-639.

§ 56-629. Price to beat.

A. As used in this section:

"Incumbent retail electric provider" means a retail electric provider separated from an incumbent electric utility pursuant to § 56-615.

"Small commercial retail electric customer" means a commercial retail electric customer having a peak demand of 1,000 kilowatts or less.

B. From January 1, 2022, until January 1, 2027, an incumbent retail electric provider shall make available to residential and small commercial retail electric customers in the service area of the incumbent electric utility from which it separated under § 56-615 utility rates that, on a bundled basis, are six percent less than the incumbent electric utility's corresponding average residential and small commercial retail electric rates, on a bundled basis, that were in effect on January 1, 2019, adjusted to reflect the wholesale power cost basis determined as provided by subsection C. These rates on a bundled basis shall be known as the "price to beat" for residential and small commercial retail electric customers.

C. The Commission shall determine the wholesale power cost basis for each incumbent electric utility as of December 31, 2021.

D. An incumbent retail electric provider shall make public its price to beat in a manner that provides adequate disclosure as determined by the Commission.

E. The incumbent retail electric provider may not charge rates for residential or small commercial retail electric customers that are different from the price to beat until the earlier of 36 months after the date customer choice is introduced or:

1. For service to residential retail electric customers, the date the Commission determines that 40 percent or more of the electric power consumed by residential retail electric customers within the incumbent electric utility's certificated service area before the onset of customer choice is committed to be served by retail electric providers that were not separated from the incumbent electric utility pursuant to § 56-615; or

2. For service to small commercial retail electric customers, the date the Commission determines that 40 percent or more of the electric power consumed by small commercial retail electric customers within the incumbent electric utility's certificated service area before the onset of customer choice is committed to be served by retail electric providers that were not separated from the incumbent electric utility pursuant to § 56-615.

F. Notwithstanding subsection E, the incumbent retail electric provider may charge rates that are

different from the price to beat for service to aggregated loads of nonresidential retail electric customers having an aggregated peak demand greater than 1,000 kilowatts, provided that all affected customers are:

1. Commonly owned; or

2. Franchisees of the same franchisor.

G. The incumbent retail electric provider may not encourage or provide an incentive to a customer to switch to any other retail electric provider, promote any other retail electric provider, or exchange customers with any other retail electric provider to comply with the requirements of subdivision E 1 or 2.

H. The following standards shall be used for measuring electric power consumption during the period before the onset of customer choice:

1. The consumption of residential and small commercial retail electric customers with an annual peak demand less than or equal to 20 kilowatts shall be based on the average annual consumption of those respective groups during the year 2020;

2. Consumption for all small commercial retail electric customers with an annual peak demand larger than 20 kilowatts shall be based on each customer's usage during the year 2020; and

3. For purposes of determining whether an incumbent retail electric provider has met the requirements of subdivision E 2, the aggregated loads of nonresidential retail electric customers having a peak demand greater than 1,000 kilowatts that are served by the incumbent retail electric provider at a rate different from the price to beat under subsection F shall be deducted from the electric power consumption of small commercial customers during the period before the onset of customer choice.

I. For purposes of subdivision H 2, if less than 12 months of consumption history exists for any such customer, the usage history shall be supplemented with the prior history of that customer's location. For service to a new location, the annual consumption shall be determined as the incumbent electric utility's estimate of the maximum annual kilowatt demand used in sizing the electric service to that customer multiplied by 8,760 hours, and that product multiplied by the average annual customer load factor for small commercial retail electric customers with loads greater than 20 kilowatts for the year 2020.

J. On determining that it has met the requirements of subdivision E 1 or 2, an incumbent retail electric provider shall make a filing with the Commission attesting to the fact that those requirements have been met and that the restrictions of subdivision E 1 or 2 are no longer applicable. The Commission shall adopt appropriate procedures to enable it to accept or reject the filing within 30 days.

K. On finding that an incumbent retail electric provider will be unable to maintain its financial integrity if it complies with subsection B, the Commission shall set the incumbent retail electric provider's price to beat at the minimum level that will allow the incumbent retail electric provider to maintain its financial integrity. However, in no event shall the price to beat exceed the level of rates, on a bundled basis, charged by the incumbent electric utility on September 1, 2019, adjusted for wholesale cost basis as provided by subsection C.

§ 56-630. Regulation of transmission; independent transmission system organization.

A. The Commission shall continue to regulate pursuant to this title electric transmission utility service, to the extent not prohibited by federal law.

B. Each electric transmission utility shall join or establish an independent transmission system organization or regional transmission operator that has been approved by the Federal Energy Regulatory Commission to which such utility shall transfer the management and control of its transmission assets, subject to the following:

1. No electric transmission 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 without obtaining, following notice and hearing, the prior approval of the Commission, as provided in this section.

2. The Commission shall have rules and regulations under which any electric transmission utility may transfer all or part of its control, ownership, or responsibility to an independent transmission system organization 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 to it;

(2) Vibrant competition in the sale of electricity at wholesale; and

(3) 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 achieved on terms that fairly compensate the transferor for the rights that are transferred; and

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 the Commonwealth, including those that do not own, operate, control, or have an entitlement to transmission capacity.

C. The Commission shall adopt rules and regulations, with appropriate public input, establishing elements of independent transmission system organization 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 electric transmission utility to an independent transmission system organization or regional transmission organization.

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

E. 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 the Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1 et seq.);

2. The laws of the 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; or

3. The Commission's authority over retail electricity sold to retail customers within the Commonwealth as set forth in this title.

F. 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.

G. 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.

§ 56-631. Open access distribution service.

A. On or after January 1, 2022, and during any pilot project conducted under § 56-619, an electric transmission and distribution utility shall provide distribution service at retail to each retail electric provider at rates, terms of access, and conditions that are comparable to those that apply to other retail electric providers.

B. Each power region shall have generally applicable distribution tariffs approved by the Commission that guarantee open and nondiscriminatory access to the electric distribution system.

§ 56-632. Tariffs for open access.

Each electric transmission and distribution utility shall file a tariff implementing the open access rules, under § 56-631, with the Commission or the federal regulatory authority having jurisdiction over the transmission and distribution service of the utility not later than the ninetieth day before the date customer choice is offered by that utility.

§ 56-633. Certification of retail electric providers.

A. After the date of customer choice and during any pilot project conducted under § 56-619, a person, including a retail electric provider separated from an incumbent electric utility pursuant to § 56-615, may not provide retail electric service in the Commonwealth unless the person is certified by the Commission as a retail electric provider, in accordance with this section.

B. The Commission shall issue a certificate to provide retail electric service to a person applying for certification who demonstrates:

1. The financial and technical resources to provide continuous and reliable electric service to customers in the area for which the certification is sought;

2. The managerial and technical ability to supply electricity at retail in accordance with customer contracts;

3. The resources needed to meet the customer protection requirements of this chapter; and

4. Ownership or lease of an office located within the Commonwealth for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the retail electric provider's compliance with the requirements of this chapter.

C. A person applying for certification under this section shall comply with all applicable customer protection provisions, disclosure requirements, and marketing guidelines established by the Commission and by this title.

D. Notwithstanding the provisions of subdivisions B 1, 2, and 3, if a retail electric provider files with the Commission a signed and notarized affidavit from each retail customer with which it has contracted to provide one megawatt or more of capacity stating that the customer is satisfied that the retail electric

provider meets the standards prescribed by subdivisions B 1, 2, and 3 and subsection C, the retail electric provider shall be certified for purposes of serving those customers only, so long as it demonstrates that it meets the requirements of subdivision B 4.

E. A retail electric provider may apply for certification any time after September 1, 2020.

F. The Commission shall use any information required in this section in a manner that ensures the confidentiality of competitively sensitive information.

§ 56-634. Registration of aggregators.

A. A person may not provide aggregation services in the Commonwealth unless the person is registered with the Commission as an aggregator.

B. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

C. A person registering under this section shall comply with all customer protection provisions, all disclosure requirements, and all marketing guidelines established by the Commission and by this title.

D. The Commission shall establish terms and conditions it determines necessary to regulate the reliability and integrity of aggregators in the Commonwealth by August 1, 2020.

E. An aggregator may register any time after September 1, 2020.

F. The Commission shall have up to 60 days to process applications for registration filed by aggregators.

G. Registration is not required of a customer that is aggregating loads from its own location or facilities.

H. The Commission shall work with the Virginia Economic Development Partnership to communicate information about opportunities for operation as aggregators to potential new aggregators, including small and historically underutilized businesses.

§ 56-635. Revocation of certification.

A. The Commission may suspend, revoke, or amend a retail electric provider's certificate upon finding significant violations of this title or the rules adopted under this title or of any reliability standard adopted by the independent distribution system operator or an independent transmission system organization, including the failure to observe any scheduling, operating, planning, reliability, or settlement protocols established by the entities. The Commission may also suspend or revoke a retail electric provider's certificate if the provider no longer has the financial or technical capability to provide continuous and reliable electric service.

B. The Commission may suspend or revoke an aggregator's registration upon finding significant violations of this title or of the rules adopted under this title.

§ 56-636. Penalties.

In addition to the suspension, revocation, or amendment of a certification, the Commission may, by its order duly entered after hearing, held after due notice to the holder of any such certificate and an opportunity to such holder to be heard, impose penalties of up to $10,000 per violation on (i) any retail electric provider found by the Commission to have violated any provision of this title or the rules adopted under this title or of any reliability standard adopted by the independent distribution system operator or an independent transmission system organization, including the failure to observe any scheduling, operating, planning, reliability, or settlement protocols established by the entities, or (ii) any aggregator found by the Commission to have committed a significant violations of this title or of the rules adopted under this title.

§ 56-637. Customer education.

On or before January 1, 2021, the independent distribution system operator shall develop and implement an educational program to inform customers, including low-income and non-English-speaking customers, about changes in the provision of electric service resulting from the opening of the retail electric market and the customer choice pilot program under this chapter. The educational program shall be neutral and nonpromotional and shall provide customers with the information necessary to make informed decisions relating to the source and type of electric service available for purchase, and other information the independent distribution system operator considers necessary. The educational program shall inform customers of their rights and of the protections available through the Commission. The educational program may not duplicate customer information efforts undertaken by retail electric providers or other private entities. In planning and implementing this program, the independent distribution system operator shall consult with the Virginia Department of Agriculture and Consumer Services and with customers of and providers of retail electric service. The independent distribution system operator may enter into contracts for professional services to carry out the customer education program. The independent distribution system operator shall discontinue any programs authorized by this section on or before January 1, 2027.

§ 56-638. Financial assistance for low-income customers; Percentage of Income Payment Plan; weatherization program.

A. As used in this section:

"Eligible customer" means a residential customer of a retail electric provider whose household

income is at or below 150 percent of the federal nonfarm poverty level as published for the then-current year in the Code of Federal Regulations.

"Participant" means an eligible customer whose application for enrollment in the PIPP has been accepted by the Commission and who has satisfied all other requirements for participation in the PIPP.

"Percentage of Income Payment Plan " or "PIPP" means the program established pursuant to this section under which a level of payment responsibility to be borne by an eligible customer is specified based on a percentage of the customer's income.

"Weatherization program" means the home weatherization program implemented by the Commission pursuant to subsection H.

B. The Percentage of Income Payment Plan (PIPP or PIP Plan) is hereby created as a mandatory bill payment assistance program for low-income residential customers of utilities.

C. The PIP Plan shall be administered as follows:

1. By July 1, 2021, the Commission shall adopt rules, in cooperation with the Department of Social Services, for determining eligibility for the PIPP and establish requirements for income verification and application procedures. Applicants will be screened to determine whether the applicant's projected payments for electric service over a 12-month period exceed the criteria established in this section.

2. The Commission shall determine the amount of a monthly credit that will be applied to each participant's electric utility bill from his retail electric provider for that month. The amount of each monthly credit for a participant shall be the amount by which (i) the participant's actual monthly bill for electric service or (ii) the statewide average monthly bill amount for that month, whichever is less, exceeds an amount equal to (a) 10 percent of the participant's monthly household income if the participant's residence's primary source of space heating is electricity or (b) six percent if the participant's residence's primary source of space heating is natural gas or propane; however, in no event shall a participant's share of his monthly electric utility bill be less than $10. The Commission shall establish the statewide average monthly bill amount for each month by averaging the bill amounts for basic service to similar households in the Commonwealth offered by retail electric providers that have demonstrated long-term financial viability.

3. Each participant shall enter into a levelized payment plan for electric service with his retail electric provider. Such plans shall be implemented by the utility so that a participant's usage and required payments are reviewed and adjusted regularly, but no more frequently than quarterly. Each participant's first payment shall be due upon acceptance of enrollment in the PIPP.

4. The Commission shall remit on a monthly basis to the appropriate retail electric provider, from such funds in the system benefit fund established pursuant to § 56-639, that portion of the participant's bill that is not the responsibility of the participant. The Commission shall adopt processes that provide for the timely payment required by this subdivision.

5. A participant is responsible to his retail electric provider for all actual charges for electric utility service in excess of the PIPP credit. Emergency or crisis assistance payments under the Home Energy Assistance Program pursuant to § 63.2-805 shall not affect the amount of any PIPP credit to which a participant is entitled.

6. The Commission may terminate a participant's eligibility for the PIPP upon notification by the utility that the participant's monthly electric utility payment is more than 45 days past due.

7. The Commission may adjust the number of PIPP participants annually, if necessary, to match the availability of funds in the system benefit fund.

8. As part of the application and screening process established under subdivision 1, the Commission shall assess whether any weatherization, energy efficiency, or demand response measures are available to the plan participant at no cost, and if so, the participant shall enroll in any such program for which he is eligible.

9. The Commission shall:

a. Develop and implement a program to educate customers about the PIPP and about their rights and responsibilities under the percentage of income component; and

b. Establish a process to contact customers in jeopardy of losing eligibility due to late payments.

10. Every 12 months, each PIPP participant shall be required to provide proof that gross monthly household income is at or below 150 percent of the federal poverty level to remain a participant. At that time, the participant shall have made up any portions of electric utility payments that the participant failed to pay over the preceding 12 months.

D. In order to ensure that implementation costs are minimized, the Commission and retail electric providers shall work together to identify cost-effective ways to transfer information electronically and to employ available protocols that will minimize their respective administrative costs as follows:

1. The Commission may require retail electric providers to provide such information on customer usage and billing and payment information as required by the Commission to implement the PIPP and to provide written notices and communications to plan participants.

2. Each retail electric provider shall file annual reports with the Commission that cumulatively summarize and update program information as required by the Commission's rules. The reports shall track implementation costs and contain such information as is necessary to evaluate the success of the PIPP.

E. The Commission shall have the authority to adopt rules and regulations necessary to execute and administer the provisions of this section.

F. Each retail electric provider shall be entitled to recover reasonable administrative and operational costs incurred to comply with this section from the system benefit fund. The retail electric provider may net such costs against moneys it would otherwise remit to the fund, and each retail electric provider shall include in the annual report required under subdivision D 2 an accounting for the funds collected.

G. The PIPP shall be implemented in coordination with the Department of Social Services' administration of the Home Energy Assistance Program pursuant to § 63.2-805.

H. The Commission shall establish and implement a weatherization program for participants. The weatherization program shall be structured in a manner that seeks to reduce the cost of space heating and cooling in participants' residences by improving their energy efficiency. Priority shall be given to participants who are 60 years of age or older, those with disabilities, those with children in the home, households with a high energy usage or burden, and those who have received assistance any time during the last 12 months under Supplemental Security Income, Temporary Assistance for Needy Families, or Home Energy Assistance programs. The weatherization program shall provide participants with a home energy inspection to determine the most cost-effective energy efficiency improvements for the home, which improvements may include any one or more of the following:

1. Safety inspection, tune-up and repair, and if necessary, installation of heating units;

2. Insulation of attics;

3. Insulation of sidewalls;

4. Insulation of heating ducts;

5. Insulation of floors;

6. Insulation of water tanks;

7. Reduction of air leakage from major sources;

8. Personalized energy management plans; and

9. Information on ways to manage day-to-day energy use.

The Commission shall coordinate implementation of the weatherization program with the weatherization assistance program administered by the Department of Housing and Community Development pursuant to subdivision 21 of § 36-139. The costs of the weatherization program shall be provided from the system benefit fund established pursuant to § 56-639. The Commission may adjust the number of weatherization program participants annually, if necessary, to match the availability of funds in the system benefit fund. The Commission shall coordinate with the Department of Housing and Community Development and the Department of Mines, Minerals and Energy to establish protocols for such agencies to collect, track, and share energy savings metrics achieved from the implementation of energy efficiency measures for the benefit of participants in the PIPP program. Such data shall be included in the annual reports required pursuant to subdivision D 2.

§ 56-639. System benefit fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the System Benefit Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All nonbypassable fees shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the independent distribution system operator. Money in the account may be used only for the purposes provided by this section. Interest earned on the system benefit fund shall be credited to the fund.

B. The system benefit fund is financed by a non-bypassable fee set by the Commission. The system benefit fund fee is allocated to retail electric customers based on the amount of kilowatt hours used.

C. The Commission shall annually review and approve system benefit fund accounts, projected revenue requirements, and proposed non-bypassable fees.

D. Money in the system benefit fund may be used to provide funding solely for the following purposes:

1. Customer education programs authorized by § 56-637.

2. The Percentage of Income Payment Plan and weatherization programs authorized by § 56-638.

3. Energy efficiency programs authorized by § 56-640.

4. Credits to participants in net energy metering programs as provided in subsection D of § 56-647.

§ 56-640. Energy efficiency resource standard.

A. As used in this section:

"Cost-effective energy efficiency potential" means the energy efficiency program potential that is cost-effective using methodologies consistent with the National Standard Practice Manual developed by the National Efficiency Screening Project. The costs and benefits used to determine the cost-effective potential shall at least consist of (i) the costs and benefits to the utility system and (ii) the costs and benefits to energy efficiency program participants.

"Energy efficiency program" means a program that reduces the total amount of electricity that is required for the same process or activity. "Energy efficiency programs" include equipment, physical, or program changes designed to produce measured and verified reductions in the amount of electricity required to perform the same function and produce the same or a similar outcome. "Energy efficiency programs" may include (i) programs that result in improvements in lighting design; heating, ventilation, and air conditioning systems and their operation; appliances; building envelopes; and industrial and commercial processes or (ii) customer engagement programs that result in measurable and verifiable energy savings that lead to efficient use patterns and practices. "Energy efficiency programs" may be integrated with demand response, combined heat and power and waste heat recovery, curtailment, or other programs that are designed to reduce electricity consumption so long as they reduce the total amount of electricity that is required for the same process or activity.

"Measured and verified" means a process determined pursuant to methods accepted for use to evaluate, measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the U.S. Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

"Utility system" means, notwithstanding any other provision of this title, the generation, transmission, and distribution facilities and services used to provide retail electricity service in an electric transmission and distribution utility system service area.

B. The independent distribution system operator shall by April 1, 2022, identify the achievable cost-effective energy efficiency potential for each electric transmission and distribution utility service area in the Commonwealth. The operator shall use an independent firm to analyze the potential and use a stakeholder engagement process throughout the study development and completion. At least every three years thereafter, the independent distribution system operator shall update this assessment for the subsequent 10-year period.

C. If the independent distribution system operator determines in the assessment required by subsection B that an electric transmission and distribution utility service area has achievable cost-effective energy efficiency potential, the operator shall (i) within six months after completion of the assessment, establish annual targets and 10-year cumulative targets to achieve this potential and (ii) issue a solicitation for bids from persons to develop and implement energy efficiency programs that achieve the targets. The Commission may consolidate energy efficiency programs of multiple utility service areas.

D. The independent distribution system operator shall select from a separate annual bidding process an independent third-party auditor to conduct evaluation, measurement, and verification of energy efficiency programs.

E. The funds to support the energy efficiency programs authorized by this section in an electric transmission and distribution utility service area shall be obtained through a non-bypassable system benefit fund fee assessed by the electric transmission and distribution utility pursuant to § 56-628.

§ 56-641. Interconnection of distributed electricity generation.

A. As used in this section:

"Distributed electricity generation" means electric generation with a capacity of not more than 3,000 kilowatts provided by an electric generation technology that is installed on a retail electric customer's side of the meter.

"Distributed electricity generation owner" means:

1. An owner of distributed electricity generation;

2. A retail electric customer on whose side of the meter distributed electricity generation is installed and operated, regardless of whether the customer takes ownership of the distributed electricity generation; or

3. A person who by contract is assigned ownership rights to energy produced from distributed electricity generation located at the premises of the customer on the customer's side of the meter.

"Interconnection" means the physical connection of a distributed electricity generation facility to an electric distribution utility system.

B. A distributed electricity generation owner shall have the right to interconnection.

C. An electric distribution utility shall allow interconnection if:

1. The distributed electricity generation to be interconnected has a five-year warranty against breakdown or undue degradation; and

2. The rated capacity of the distributed electricity generation facility does not exceed the electric transmission and distribution utility capacity.

D. A customer may request interconnection by filing an application for interconnection with the electric transmission and distribution utility. Procedures of an electric transmission and distribution utility for the submission and processing of a customer's application for interconnection shall be consistent with rules adopted by the Commission regarding interconnection.

E. The Commission by rule shall establish safety, technical, and performance standards for distributed electricity generation that may be interconnected. In adopting the rules, the commission shall consider standards published by the Underwriters Laboratories, the National Electric Code, the National Electric Safety Code, and the Institute of Electrical and Electronics Engineers.

F. An electric transmission and distribution utility or retail electric provider may not require a residential distributed electricity generation owner whose distributed electricity generation meets the standards established by rule under subsection D to purchase an amount, type, or classification of liability insurance the distributed electricity generation owner would not have in the absence of the distributed electricity generation. The Commission shall prescribe rules for liability insurance that may be required for nonresidential distributed electricity generation systems.

G. An electric transmission and distribution utility shall make available to a distributed electricity generation owner for purposes of this section metering required for services provided under this section.

H. A retail electric provider may contract with a distributed electricity generation owner in order that:

1. Surplus electricity produced by distributed electricity generation is made available for sale to the retail electric provider; and

2. The net value of that surplus electricity, valued at the energy price at the location of the distributed electricity generator at the time the energy is produced, is credited to the distributed electricity generation owner.

I. The distributed electricity generation owner shall sell electricity it has produced to the retail electric provider that serves the distributed electricity generation owner's load at a value and at other terms agreed to between the distributed electricity generation owner and the provider that serves the owner's load, which may include an agreed value based on the clearing price of energy at the time of day that the electricity is made available to the grid or may be a credit applied to an account during a billing period that may be carried over to subsequent billing periods until the credit has been redeemed. The independent distribution system operator established by § 56-624 shall develop procedures so that the amount of electricity purchased from a distributed electricity generation owner under this section is accounted for in settling the total load served by the provider that serves that owner's load by September 1, 2021. A distributed electricity generation owner requesting payment for electricity under this section shall have metering devices capable of providing measurements consistent with the independent distribution system operator's or regional transmission organization's settlement requirements.

J. Neither a retail electric customer that uses distributed electricity generation, nor the owner of the distributed electricity generation that the retail electric customer uses, is an electric distribution utility, electric transmission utility, power generation company, or retail electric provider for the purposes of this title.

§ 56-642. Net energy metering transition provisions for electric cooperatives.

Distribution electric cooperatives subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 shall be regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et seq.), as amended by relevant sections of this chapter and by the following provisions:

1. Notwithstanding anything to the contrary in this title, each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon the adoption by its board of directors of a resolution so providing, make adjustments in the cooperative's rates, terms, conditions, and rate schedules governing net energy metering as provided in this section by electing to subject itself to the provisions of this section. The cooperative promptly shall (i) file such resolution and notice with the Commission for informational purposes and (ii) place a notice of its board of directors' adoption of such resolution (the Cooperative Net Energy Metering Transition Notice) on the cooperative's website. The Cooperative Net Energy Metering Transition Notice shall contain an initial election date and a date upon which, for each class of net energy metering customer, the transition shall become effective five years following the date of the initial Cooperative Net Energy Metering Transition Notice. A Cooperative Net Energy Metering Transition Notice may be amended and refiled as the cooperative deems appropriate at any time. Any eligible customer-generator as defined in § 56-643 that was interconnected prior to a transition start date enumerated in a Cooperative Net

Energy Metering Transition Notice may continue to participate in net energy metering until July 1, 2039.

2. After the transition date for a class of customers, any standby charges implemented by the cooperative shall be eliminated and are prohibited. The cooperative may make any necessary changes to rate schedules or terms and conditions and shall promptly file the same with the Commission for informational purposes.

3. Whenever the cooperative's transition date occurs, the cooperative may establish and publish, without Commission approval or the requirement of any filing other than as provided in this subdivision, a new rate schedule or rider for purposes of its new net energy metering program established pursuant to this section and shall promptly file the same with the Commission for informational purposes.

4. The new rate schedule or rider described in subdivision 3 may contain a demand charge or charges for distribution, supply, or both, based upon a customer's monthly, ratcheted, or 60-minute absolute value noncoincident peak demand for customers that were not previously subject to demand charges in each rate class; however, such demand charges shall be revenue neutral based on the cooperative's determination of the proper intra-class allocation of the revenues produced by its then-current rates serving the same rate class of customer. The cooperative shall implement such new demand charge through the provisions of subdivision 5. The cooperative shall file promptly revised tariffs reflecting any such new demand charges with the Commission for informational purposes. The demand charge component of any net energy metering rate class derived from a rate class with a preexisting demand charge shall remain fixed for a period of five years. The fixed monthly customer charge of any net energy metering rate class derived from a preexisting rate class having a fixed monthly customer charge less than or equal to $20 as of the transition date shall not exceed $20 for the duration of the five-year period described in subdivision 5. During the five-year period described in subdivision 5, a cooperative may not increase the monthly customer charge of any net energy metering rate class derived from a preexisting rate class having a fixed monthly customer charge greater than $20 as of the transition date. Demand charges included in a new rate schedule or rider shall apply to net energy metering customers, regardless of whether a customer uses a third-party partial requirements power purchase agreement or not.

5. For purposes of implementing subdivision 4, a cooperative shall, after the published transition date for a given class of customers, close its existing net energy metering rate schedule rider to new customers and open a new tariff pursuant to subdivision 3. Demand charges shall be implemented over a five-year period. In the first year of the five-year period, the demand charges shall be set to zero. In the second year of the five-year period, implementation of the demand rates may begin, and demand charges shall not exceed $0.25 per kilowatt of distribution demand and $0.25 per kilowatt of supply demand. In the third year of the five-year period, the demand charges shall not exceed $0.50 per kilowatt of distribution demand and $0.50 per kilowatt of supply demand. In the fourth year of the five-year period, the demand charges shall not exceed $0.75 per kilowatt of distribution demand and $0.75 per kilowatt of supply demand. In the fifth year of the five-year period, the demand charges shall not exceed $1 per kilowatt of distribution demand and $1 per kilowatt of supply demand. Following the expiration of the five-year period, the cooperative is authorized to rebalance its rates. In any filing for informational purposes, the cooperative shall clearly set forth to the Commission the schedule for the five-year period.

6. After the transition date for a given class of customers, the following caps shall apply to net energy metering for that class of customer. The caps shall be adjusted as follows, expressed in alternating current nameplate capacity of the generators: three percent of system peak for residential customers, four percent of system peak for not-for-profit and nonjurisdictional customers, and two percent for other nonresidential customers.

7. After the transition date for a given class of customers, only the following restrictions shall apply to the capacity of a net energy metering electrical generating facility:

a. For nonresidential customers, the maximum capacity shall not exceed the least of:

(1) 1.2 megawatts alternating current;

(2) One percent of the cooperative's system peak; or

(3) The expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available; and

b. For residential customers, the maximum capacity shall not exceed 125 percent of the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

8. After the transition date for a given class of customers, third-party partial requirements power purchase agreements entered into with registered providers shall be permitted for that class of customer.

§ 56-643. Net energy metering provisions.

A. The Commission shall establish by regulation a program that affords eligible customer-generators

the opportunity to participate in net energy metering, and a program, to begin no later than July 1, 2014, for customers of investor-owned utilities and to begin no later than July 1, 2015, and to end July 1, 2019, for customers of electric cooperatives as provided in subsection G, to afford eligible agricultural customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; (v) eligible agricultural customer-generators; or (vi) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest. On and after July 1, 2017, small agricultural generators or eligible agricultural customer-generators may elect to interconnect pursuant to the provisions of this section or as small agricultural generators pursuant to § 56-645, but not both. Existing eligible agricultural customer-generators may elect to become small agricultural generators, but may not revert to being eligible agricultural customer-generators after such election. On and after July 1, 2019, interconnection of eligible agricultural customer-generators shall cease for electric cooperatives only, and such facilities shall interconnect solely as small agricultural generators. For electric cooperatives, eligible agricultural customer-generators whose renewable energy generating facilities were interconnected before July 1, 2019, may continue to participate in net energy metering pursuant to this section for a period not to exceed 25 years from the date of their renewable energy generating facility's original interconnection.

B. For the purpose of this section:

"Eligible agricultural customer-generator" means a customer that operates a renewable energy generating facility as part of an agricultural business, which generating facility (i) uses as its sole energy source solar power, wind power, or aerobic or anaerobic digester gas, (ii) does not have an aggregate generation capacity of more than 500 kilowatts, (iii) is located on land owned or controlled by the agricultural business, (iv) is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (v) is interconnected and operated in parallel with an electric company's transmission and distribution facilities, and (vi) is used primarily to provide energy to metered accounts of the agricultural business. An eligible agricultural customer-generator may be served by multiple meters that are located at separate but contiguous sites, such that the eligible agricultural customer-generator may aggregate in a single account the electricity consumption and generation measured by the meters, provided that the same utility serves all such meters. The aggregated load shall be served under the appropriate tariff.

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers on an electrical generating facility placed in service after July 1, 2015; (ii) uses as its total source of fuel renewable energy; (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements. In addition to the electrical generating facility size limitations in clause (i), the capacity of any generating facility installed under this section after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator or eligible agricultural customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator or eligible agricultural customer-generator.

"Net metering period" means the 12-month period following the date of final interconnection of the eligible customer-generator's or eligible agricultural customer-generator's system with an electric service provider, and each 12-month period thereafter.

"Small agricultural generator" has the same meaning that is ascribed to that term in § 56-645.

C. The Commission's regulations shall ensure that (i) the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible customer-generator seeking to participate in net energy metering shall notify its supplier and receive approval to interconnect prior to installation of an electrical generating facility. The electric distribution company shall have 30 days from the date of notification for residential facilities, and 60 days from the date of notification for nonresidential facilities, to determine whether the interconnection requirements have been met. Such regulations shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's electrical generating system, and each electrical generating system of an eligible agricultural customer-generator, shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and

Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section and to ensure public safety, power quality, and reliability of the supplier's electric distribution system, an eligible customer-generator or eligible agricultural customer-generator whose electrical generating system meets those standards and rules shall bear all reasonable costs of equipment required for the interconnection to the supplier's electric distribution system, including costs, if any, to (a) install additional controls, (b) perform or pay for additional tests, and (c) purchase additional liability insurance.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the eligible customer-generator or eligible agricultural customer-generator against discrimination by virtue of its status as an eligible customer-generator or eligible agricultural customer-generator, and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator or eligible agricultural customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators or eligible agricultural customer-generators served on demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

E. If electricity generated by an eligible customer-generator or eligible agricultural customer-generator over the net metering period exceeds the electricity consumed by the eligible customer-generator or eligible agricultural customer-generator, the customer-generator or eligible agricultural customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the eligible customer-generator or eligible agricultural customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the eligible customer-generator or eligible agricultural customer-generator, the supplier that serves the eligible customer-generator or eligible agricultural customer-generator shall enter into a power purchase agreement with the requesting eligible customer-generator or eligible agricultural customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the supplier to purchase such excess electricity at the rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator or eligible agricultural customer-generator owns any renewable energy certificates associated with its electrical generating facility; however, at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier, the eligible customer-generator or eligible agricultural customer-generator shall have a one-time option to sell the renewable energy certificates associated with such electrical generating facility to its supplier and be compensated at an amount that is established by the Commission to reflect the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-generator or eligible agricultural customer-generator and the supplier from voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the eligible customer-generator or eligible agricultural customer-generator does not exercise its option to sell its renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators or eligible agricultural customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all costs shall be recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator or eligible agricultural customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's or eligible agricultural customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible customer-generators or eligible agricultural customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators, eligible agricultural customer-generators, and small agricultural generators in the Commonwealth reaches one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year (the systemwide cap), and shall require the supplier to pay the eligible customer-generator or eligible agricultural customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

F. Any residential eligible customer-generator or eligible agricultural customer-generator who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to its supplier, in addition to any other charges

authorized by law, a monthly standby charge. The amount of the standby charge and the terms and conditions under which it is assessed shall be in accordance with a methodology developed by the supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby charges collected from all such eligible customer-generators and eligible agricultural customer-generators allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with serving such eligible customer-generators or eligible agricultural customer-generators. Such an eligible customer-generator or eligible agricultural customer-generator shall not be liable for a standby charge until the date specified in an order of the Commission approving its supplier's methodology.

G. On and after the later of July 1, 2019, (i) net energy metering in the service territory of each electric cooperative shall be conducted as provided in a program implemented pursuant to § 56-594.01 and (ii) the provisions of this section shall not apply to net energy metering in the service territory of an electric cooperative.

§ 56-644. Interconnection by farms.

A. As used in this section, "eligible farm" means an entity that owns or operates facilities within the Commonwealth for the generation of electric energy, which entity is described in subdivision (b)(10) of § 56-265.1.

B. Eligible farms shall be permitted to connect to the electrical grid in order to feed into the grid electricity generated by the eligible farm from its facilities that generate electricity from a waste-to-energy technology.

C. The Commission shall adopt regulations to implement this section.

§ 56-645. Small agricultural generators.

A. As used in this section:

"Small agricultural generating facility" means an electrical generating facility that:

1. Has a capacity:

a. Of not more than 1.5 megawatts; and

b. That does not exceed 150 percent of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;

2. Uses as its total source of fuel renewable energy;

3. Is located on the customer's premises and is interconnected with its utility through a separate meter;

4. Is interconnected and operated in parallel with an electric utility's distribution but not transmission facilities;

5. Is designed so that the electricity generated by the facility is expected to remain on the utility's distribution system; and

6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Small agricultural generator" means a customer that:

1. Is not an eligible agricultural customer-generator pursuant to § 56-643;

2. Operates a small agricultural generating facility as part of an agricultural business;

3. May be served by multiple meters that are located at separate but contiguous sites;

4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating 150 percent of the customer's expected annual energy consumption, but not for billing or retail service purposes, provided that the same utility serves all of its meters;

5. Uses not more than 25 percent of contiguous land owned or controlled by the agricultural business for purposes of the renewable energy generating facility; and

6. Issues a certification under oath as to the amount of land being used for renewable generation.

"Utility" includes supplier or distributor, as applicable.

B. A small agricultural generator electing to interconnect pursuant to this section shall:

1. Enter into a power purchase agreement with its utility to sell all of the electricity generated from its small agricultural generating facility, which power purchase agreement obligates the utility to purchase all the electricity generated, at a rate agreed upon by the parties, but at a rate not less than the utility's Commission-approved avoided cost tariff for energy and capacity;

2. Have the rights described in subsection E of § 56-643 pertaining to an eligible agricultural customer-generator as to the renewable energy certificates or other environmental attributes generated by the renewable energy generating facility;

3. Abide by the appropriate small generator interconnection process as described in 20VAC5-314; and

4. Pay to its utility any necessary additional expenses as required by this section.

C. Utilities:

1. Shall purchase, through the power purchase agreement described in subdivision B 1, all of the

output of the small agricultural generator;

2. Shall recover the cost for its distribution facilities to the generating meter either through a proportional cost-sharing agreement with the small agricultural generator or through metering the total capacity and energy placed on the distribution system by the small agricultural generator;

3. Shall recover all costs incurred by the utility to purchase electricity, capacity, and renewable energy certificates from the small agricultural generator:

a. If the utility has a Commission-approved Renewable Energy Portfolio Standard (RPS) plan and rate adjustment clause, through the utility's RPS rate adjustment clause; or

b. If the utility does not have a Commission-approved RPS rate adjustment clause, through the utility's fuel adjustment clause or through the utility's cost of purchased power;

4. May conduct settlement transactions for purchased power in dollars on the small agricultural generator's electric bill or through other means of settlement, in the utility's sole discretion;

5. Shall bill the small agricultural generator eligible costs for small generator interconnection studies required pursuant to the appropriate small generator interconnection process described in subdivision B 3; and

6. Shall bill its expenses, at cost, for any additional engineering studies that a small agricultural generator is required to pay prior to interconnection.

§ 56-646. Net energy metering provisions for electric cooperative service territories.

A. The Commission shall establish by regulation a program that affords eligible customer-generators the opportunity to participate in net energy metering in the service territory of each electric cooperative, which program shall commence on the later of July 1, 2019, or the effective date of such regulations. Such regulations shall be similar to regulations promulgated pursuant to former § 56-594 and 56-594.01. In lieu of adopting new regulations, the Commission may amend such existing regulations to apply to electric cooperatives with such revisions as are required to comply with the provisions of this section. The regulations may include requirements applicable to (i) retail sellers, (ii) owners or operators of distribution or transmission facilities, (iii) providers of default service, (iv) eligible customer-generators, or (v) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest.

B. As used in this section:

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers on an electrical generating facility placed in service after July 1, 2015; (ii) uses as its total source of fuel renewable energy; (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements. In addition to the electrical generating facility size limitations in clause (i), the capacity of any generating facility installed under this section after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator.

"Net metering period" means the 12-month period following the date of final interconnection of the eligible customer-generator's system with an electric service provider, and each 12-month period thereafter.

C. The Commission's regulations shall ensure that (i) the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible customer-generator seeking to participate in net energy metering shall notify its supplier and receive approval to interconnect prior to installation of an electrical generating facility. The Commission shall publish a form for such prior notice and such notice shall be processed promptly by the supplier prior to any construction activity taking place. After construction, inspection and documentation thereof shall be required prior to interconnection. The electric distribution company shall have 30 days from the date of each notification for residential facilities, and 60 days from the date of each notification for nonresidential facilities, to determine whether the interconnection requirements have been met. Such regulations shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's electrical generating system shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. In

addition to the requirements set forth in this section and to ensure public safety, power quality, and reliability of the supplier's electric distribution system, an eligible customer-generator whose electrical generating system meets those standards and rules shall bear all reasonable costs of equipment required for the interconnection to the supplier's electric distribution system, including costs, if any, to (a) install additional controls, (b) perform or pay for additional tests, and (c) purchase additional liability insurance. An electric cooperative may publish and use its own forms, including an electronic form, for purposes of implementing the regulations described herein so long as the information collected on the Commission's form is also collected by the cooperative and submitted to the Commission.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the eligible customer-generator against discrimination by virtue of its status as an eligible customer-generator and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators served on demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

E. If electricity generated by an eligible customer-generator over the net metering period exceeds the electricity consumed by the eligible customer-generator, the customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the eligible customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the eligible customer-generator, the supplier that serves the eligible customer-generator shall enter into a power purchase agreement with the requesting eligible customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the supplier to purchase such excess electricity at the rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator owns any renewable energy certificates associated with its electrical generating facility; however, at the time that the eligible customer-generator enters into a power purchase agreement with its supplier, the eligible customer-generator shall have a one-time option to sell the renewable energy certificates associated with such electrical generating facility to its supplier and be compensated at an amount that is established by the Commission to reflect the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-generator and the supplier from voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at mutually agreed upon prices if the eligible customer-generator does not exercise its option to sell its renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible customer-generator enters into a power purchase agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators shall be recoverable through its fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible customer-generators on a first-come, first-served basis, subject to the provisions of subsection F, and shall require the supplier to pay the eligible customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

F. Net energy metering shall be open to customers on a first-come, first-served basis until such time as the total capacity of the generation facilities, expressed in alternating current nameplate, reaches two percent of system peak for residential customers, two percent of system peak for not-for-profit and nonjurisdictional customers, and one percent of system peak for other nonresidential customers, which are herein referred to as the electric cooperative's caps. As used in this subsection, "percent of system peak" refers to a percentage of the electric cooperative's highest total system peak, based on the noncoincident peak of the electric cooperative or the coincident peak of all of the electric cooperative's customers, within the past three years as listed in Part O, Line 20 of Form 7 filed with the Rural Utilities Service or its equivalent, less any portion of the cooperative's total load that is served by a competitive service provider or by a market-based rate. Such caps shall not decrease but may increase if the system peak in any year exceeds the previous year's system peak. Nothing in this subsection shall amend or confer new rights upon any existing nonjurisdictional contract or arrangement or work to submit any nonjurisdictional customer, contract, or arrangement to the jurisdiction of the Commission. For purposes of calculating the caps established in this subsection, all net energy metering shall be counted, whenever interconnected, and shall include net energy metering interconnected pursuant to § 56-643, agricultural net energy metering, and any net energy metering entered into with a third-party provider registered pursuant to subsection K. Net energy metering with nonjurisdictional customers entered into prior to July 1, 2019, may be counted toward the caps, in the discretion of the cooperative,

as net energy metering if the nonjurisdictional customer takes service pursuant to a cooperative's net energy metering rider. Net energy metering with nonjurisdictional customers entered into on or after July 1, 2019, shall be counted toward the caps by default unless the cooperative has reason to exclude such net energy metering as subject to a separate contract or arrangement. Each electric cooperative governed by this section shall publish information regarding the calculation and status of its caps pursuant to this subsection, or the electric cooperative's systemwide cap established in former § 56-585.4 if applicable, on the electric cooperative's website.

G. An electric cooperative may, without Commission approval or the requirement of any filing other than as provided in this subsection, upon the adoption by its board of directors of a resolution so providing, raise the caps established in subsection F up to a cumulative total of seven percent of system peak, calculated according to the methodology described in subsection F, with any increase allocated among residential, not-for-profit and nonjurisdictional, and other nonresidential customers as the board of directors may find to be in the interests of the electric cooperative's membership. The electric cooperative shall promptly file a revised net energy metering compliance filing with the Commission for informational purposes.

H. Any residential eligible customer-generator who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount of the standby charge and the terms and conditions under which it is assessed shall be in accordance with a methodology developed by the supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby charges collected from all such eligible customer-generators allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with serving such eligible customer-generators. Such an eligible customer-generator shall not be liable for a standby charge until the date specified in an order of the Commission approving its supplier's methodology.

I. Any eligible agricultural customer-generator interconnected in an electric cooperative service territory prior to July 1, 2019, shall continue to be governed by § 56-643 and the regulations adopted pursuant thereto throughout the grandfathering period described in subsection A of § 56-643.

J. Any eligible customer-generator served by a retail electric provider shall engage in net energy metering only with such supplier and pursuant only to tariffs filed by such supplier. Such an eligible customer-generator shall pay the full portion of its distribution charges, without offset or netting, to its electric cooperative.

K. After the conclusion of the Commission's rulemaking proceeding pursuant to subsection L, third-party partial requirements power purchase agreements, the purpose of which is to finance the purchase of renewable generation facilities by eligible customer-generators through the sale of electricity, shall be permitted pursuant to the provisions of this section only for those retail customers and nonjurisdictional customers of the electric cooperative that are exempt from federal income taxation, unless otherwise permitted by this chapter. No person shall offer a third-party partial requirements power purchase agreement in the service territory of an electric cooperative without fulfilling the registration requirements set forth in this section and complying with applicable Commission rules, including those adopted pursuant to subdivision L 2.

L. After August 1, 2019, but before January 1, 2021, the Commission shall initiate a rulemaking proceeding to promulgate the regulations necessary to implement this section as follows:

1. In conducting such a proceeding, the Commission may require notice to be given to current eligible customer-generators and eligible agricultural customer-generators but shall not require general publication of the notice. An opportunity to request a hearing shall be afforded, but a hearing is not required. In the rulemaking proceeding, the electric cooperatives governed by this section shall be required to submit compliance filings, but no other individual proceedings shall be required or conducted.

2. In promulgating regulations to govern third-party power purchase agreement providers as retail sellers, the Commission shall:

a. Direct the staff to administer a registration system for such providers;

b. Enumerate in its regulations the jurisdiction of the Commission over providers, generally limited in scope to the behavior of providers, customer complaints, and their compliance with the registration requirements and stating clearly that civil contract disputes and claims for damages against providers shall not be subject to the jurisdiction of the Commission;

c. Establish enumerate in its regulations the maximum extent of its authority over the providers, to be limited to any or all of:

(1) Monetary penalties against registered providers not to exceed $30,000 per provider registration;

(2) Orders for providers to cease or desist from a certain practice, act, or omission;

(3) Debarment of registered providers;

(4) The issuance of orders to show cause; and

(5) Authority incident to subdivisions (1) through (4);

d. Delineate in its regulations two classes of providers, one for residential customers and one for nonresidential customers;

e. Direct the staff to set up a self-certification system as described in this subdivision;

f. Establish business practice and consumer protection standards from a national renewable energy association whose business is germane to the businesses of the providers;

g. Require providers to comply with other applicable Commission regulations governing interconnection and safety, including utility procedures governing the same;

h. Require minimum capitalization or other bond or surety that, in the judgment of the Commission, is necessary for adequate consumer protection and in the public interest;

i. Require the payment of a fee of $250 for residential and nonresidential provider registration; and

j. Provide that no registered provider, by virtue of that status alone, shall be considered a public utility or competitive service provider for purposes of this title.

3. The self-certification system described in this subdivision shall require a provider to affirm to the staff, under the penalty of revocation of registration, (i) that it is licensed to do business in Virginia; (ii) the names of the responsible officers of the provider entity; (iii) that its named officers have no felony convictions or convictions for crimes of moral turpitude; (iv) that it will abide by all applicable Commission regulations promulgated under this section or for purposes of interconnections and safety; (v) that it will appoint an officer to be a primary liaison to the staff; (vi) that it will appoint an employee to be a primary contact for customer complaints; (vii) that it will have and disclose to customers a dispute resolution procedure; (viii) that it has specified in its registration materials in which territories it intends to offer power purchase agreements; (ix) that it, and each of its named officers, agree to submit themselves to the jurisdiction of the Commission as described in this subdivision; and (x) that, once registered, the provider shall report any material changes in its registration materials to the staff, as a continuing obligation of registration. The staff shall send a copy of the registration materials to each cooperative in whose territory the provider intends to offer power purchase agreements. The staff, once satisfied that the certifications required pursuant to this subdivision are complete, and not more than 30 days following the initial and complete submittal of the registration materials, shall enter the provider onto the official register of providers. No formal Commission proceeding is required for registration but may be initiated if the staff (a) has reason to doubt the veracity of the certifications of the provider or (b) in any other case, if, in the judgment of the staff, extenuating or extraordinary circumstances exist that warrant a proceeding. The staff shall not investigate the corporate structure, financing, bookkeeping, accounting practices, contracting practices, prices, or terms and conditions in a third-party partial requirements power purchase agreement. Nothing in this section shall abridge the right of any person, including the Office of Attorney General, from proceeding in a cause of action under the Virginia Consumer Protection Act, § 59.1-196 et seq.

4. The Commission shall complete such rulemaking procedure within 12 months of its initiation.

§ 56-647. Additional net energy metering provisions.

A. Notwithstanding any provision of § 56-642, 56-643, 56-644, 56-645, or § 56-646 to the contrary, the compensation structure for the energy produced by distributed customer-generators shall be determined on the basis of time-based and location-based market prices; however, if the price these generators obtain under this structure is less than what they would otherwise have received under the 1:1 retail net energy metering programs authorized by such sections, then the generators shall be credited for the difference by a ratepayer-funded program administered by the independent distribution system operator in accordance with the provisions of this section.

B. The pricing of all distributed electricity generation, as defined in subsection A of § 56-641, in the Commonwealth shall be done in accordance with § 56-641, including provisions requiring distributed customer-generators to receive time-based and location-based market prices for the excess energy that they put on the grid.

C. The net energy metering provisions shall be implemented by the incumbent electric utility until it has unbundled pursuant to § 56-615. Implementation shall then be transferred to the independent distribution system operator.

D. Customers participating in the net energy metering programs may obtain a credit when (i) the clearing price for energy at the time and location they generate surplus electricity is lower than the average retail rate in their transmission and distribution utility's service area and (ii) the price they receive for their surplus electricity is lower than this average retail rate. The credit shall be the difference between (a) the price they receive or the clearing price, whichever is higher, and (b) the average retail rate.

E. Customers shall obtain this credit from the independent distribution system operator. The funds for the credit shall be obtained from the system benefit fund under §§ 56-628 and 56-639.

§ 58.1-400.3. Minimum tax on certain electric suppliers.

A. 1. An electric supplier, except for those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax imposed by this section, instead of the corporate income tax imposed by § 58.1-400 if applicable, net of any income tax credits that may be used to offset such tax, if the tax imposed by § 58.1-400 is less than the minimum tax imposed by this subsection. An electric supplier that is organized as a limited liability, partnership, corporation that has made an election under subchapter S of the Internal Revenue Code, or other entity treated as a pass-through entity shall be subject to the minimum tax in the manner prescribed by regulation.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts for the calendar year that ends during the taxable year minus the state's portion of the electric utility consumption tax billed to consumers.

B. 1. An electric supplier that is organized as a cooperative and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax, instead of the tax on modified net income imposed by § 58.1-400.2, if the tax imposed by § 58.1-400.2, net of any credits that may be used to offset such tax, is less than the minimum tax imposed by this subsection.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts from sales to nonmembers for the calendar year that ends during the taxable year minus the consumption tax collected from nonmembers.

C. In the case of an income tax return for a period of less than 12 months, the minimum tax shall be based on the gross receipts for the calendar year that ends during the taxable period or, if none, the most recent calendar year that ended before the taxable period. The minimum tax shall be prorated by the number of months in the taxable period.

D. The State Corporation Commission shall calculate and certify to the Department for each tax year as defined in § 58.1-2600 the name, address, and minimum tax for each electric supplier. The Commission shall mail or otherwise deliver a copy of the certification to each affected electric supplier.

E. When an electric supplier subject to the tax imposed by this section is one of several affiliated corporations that file a consolidated or combined income tax return, the portion of the affiliated corporations' tax liability that is attributable to the electric supplier shall be computed as follows:

1. Each corporation included in the consolidated or combined return shall recompute its corporate income tax liability, net of any income tax credits, as if it were filing a separate return. The separate income tax liability of the electric supplier shall then be compared to the affiliated corporations' tax liability, net of any income tax credits, indicated on the consolidated or combined return. For purposes of this section, the lesser amount shall be deemed to be the corporate income tax imposed by § 58.1-400 and attributable to the electric supplier.

2. a. If such corporate income tax amount is less than the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall be subject to the minimum tax in lieu of the corporate income tax imposed by § 58.1-400.

b. If such corporate income tax amount exceeds the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall not owe the minimum tax.

F. The requirements imposed under Article 20 (§ 58.1-500 et seq.) of Chapter 3 ~~of this title~~ regarding the filing of a declaration of estimated income taxes and the payment of such estimated taxes, shall be applicable to electric suppliers regardless of whether such taxpayer expects to be subject to the minimum tax imposed herein or to the corporate income tax imposed by § 58.1-400.

For purposes of determining the applicability of the exceptions under which the addition to the tax for the underpayment of any installment of estimated taxes shall not be imposed, it shall be irrelevant whether the tax shown on the return for the preceding taxable year is the corporate income tax or the minimum tax.

G. To the extent that a taxpayer is subject to the minimum tax imposed under this section, there shall be allowed a credit against the separate, combined, or consolidated corporate income tax for the total amount of minimum tax paid by the electric supplier in all previous years that is in excess of the tax imposed by § 58.1-400 on the electric supplier for such years.

H. 1. To the extent an electric supplier or its parent company has remitted estimated income tax payments in excess of its corporate income tax liability for the taxable years beginning on or after January 1, 2001, but before January 1, 2004, such overpayments shall only be utilized to offset any corporate income tax liabilities incurred pursuant to § 58.1-400 for taxable years beginning on and after January 1, 2004, and shall not be claimed as a refund of overpaid taxes, except as provided in subdivision 2 of this subsection. For the purposes of this subsection, estimated income tax payments shall include any overpayments from a prior taxable year carried forward as an estimated payment to be credited towards a future tax liability.

2. If an electric supplier has had a corporate income tax liability of greater than $0 for each taxable

year beginning on or after January 1, 2001, but before January 1, 2003, then such electric supplier may claim a refund of any estimated income tax payments in excess of their taxable year 2003 corporate income tax liability.

I. Every electric supplier which owes the minimum tax imposed by this section shall remit such tax payment to the Department of Taxation.

J. Notwithstanding any of the foregoing provisions, an electric supplier may not adjust ~~capped~~ rates ~~pursuant to § 56-582 of the Code of Virginia~~ on any portion of the minimum tax due to the Commonwealth.

K. The following words and terms, for purposes of this section, shall have the following meanings:

"Consumption tax" means the state's portion of the electric utility consumption tax billed pursuant to Chapter 29 (§ 58.1-2900 et seq.) ~~of this title~~, for which the electric supplier is defined as the "service provider" pursuant to § 58.1-2901 less any amounts billed on behalf of utilities owned and operated by municipalities.

"Electric supplier" means an incumbent 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 State Corporation Commission.

"Gross receipts" has the same meaning as defined in § 58.1-2600 less receipts from sales to federal, state and local governments for their own use.

"Nonmember" has the same meaning as defined in § 58.1-400.2.

§ 58.1-2900. Imposition of tax.

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 and subject to the adjustments authorized by subdivision A 5 and by § 58.1-2902, a tax on the consumers of electricity in the Commonwealth based on kilowatt hours delivered by the incumbent distribution utility and used per month as follows:

1. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month not in excess of 2,500 kWh at the rate of $0.00155 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00102/kWh	$0.00015/kWh	$0.00038/kWh

2. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 2,500 kWh but not in excess of 50,000 kWh at the rate of $0.00099 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00065/kWh	$0.00010/kWh	$0.00024/kWh

3. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 50,000 kWh at the rate of $0.00075 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00050/kWh	$0.00007/kWh	$0.00018/kWh

4. The tax rates set forth in subdivisions 1, 2, and 3 are in lieu of and replace the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§ 58.1-2660), and the local license tax (§ 58.1-3731) levied on corporations furnishing heat, light or power by means of electricity.

5. The tax on consumers under this section shall not be imposed on consumers served by an electric utility owned or operated by a municipality if such municipal electric utility elects to have an amount equivalent to the tax added on the bill such utility (or an association or agency of which it is a member) pays for bundled or unbundled transmission service as a separate item. Such amount, equivalent to the tax, shall be calculated under the tax rate schedule as if the municipal electric utility were selling and collecting the tax from its consumers, adjusted to exclude the amount which represents the local consumption tax if the locality in which a consumer is located does not impose a license fee rate pursuant to § 58.1-3731, and shall be remitted to the Commission pursuant to § 58.1-2901. Municipal electric utilities may bundle the tax in the rates charged to their retail customers. Notwithstanding anything contained herein to the contrary, the election permitted under this subdivision shall not be exercised by any municipal electric utility if the entity to whom the municipal electric utility (or an association or agency of which it is a member) pays for transmission service is not subject to the taxing jurisdiction of the Commonwealth, unless such entity agrees to remit to the Commonwealth all amounts equivalent to the tax pursuant to § 58.1-2901.

6. The tax on consumers set forth in subdivisions 1, 2, and 3 shall only be imposed in accordance with this subdivision on consumers of electricity purchased from a utility consumer services cooperative to the extent that such cooperative purchases, for the purpose of resale within the Commonwealth,

electricity from a federal entity that made payments in accordance with federal law (i) in lieu of taxes during such taxable period to the Commonwealth and (ii) on the basis of such federal entity's gross proceeds resulting from the sale of such electricity. Such tax shall instead be calculated by deducting from each of the respective tax amounts calculated in accordance with subdivisions 1, 2, and 3 an amount equal to the calculated tax amount multiplied by the ratio of the total cost of power supplied by the federal entity, including facilities rental, during the taxable period to the utility consumer services cooperative's total operating revenue within the Commonwealth during the taxable period. The State Corporation Commission may audit the records and books of any utility consumer services cooperative that determines the tax on consumers in accordance with this subdivision to verify that the tax imposed has been correctly determined and properly remitted.

B. The tax authorized by this chapter shall not apply to municipalities' own use or to use by divisions or agencies of federal, state and local governments.

C. For purposes of this section, "kilowatt hours delivered" shall mean in the case of ~~eligible customer-generators~~ *distributed electricity generation owners*, as defined in ~~§ 56-594~~ *§ 56-641*, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

§ 58.1-3221.4. Classification of improvements to real property designed and used primarily for the manufacture of a renewable energy product for tax purposes.

Improvements to real property designed and used primarily for the purpose of manufacturing a product from renewable energy, as defined in § ~~56-576~~ *56-1*, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real property. The governing body of any county, city, or town may, by ordinance, levy a tax on the value of such improvements at a different rate from that of tax levied on other real property. The rate of tax imposed by any county, city, or town on such improvements shall not exceed that applicable to the general class of real property.

§ 58.1-3506. Other classifications of tangible personal property for taxation.

A. The items of property set forth below are each declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of tangible personal property provided in this chapter:

1. a. Boats or watercraft weighing five tons or more, not used solely for business purposes;

b. Boats or watercraft weighing less than five tons, not used solely for business purposes;

2. Aircraft having a maximum passenger seating capacity of no more than 50 that are owned and operated by scheduled air carriers operating under certificates of public convenience and necessity issued by the State Corporation Commission or the Civil Aeronautics Board;

3. Aircraft having a registered empty gross weight equal to or greater than 20,000 pounds that are not owned or operated by scheduled air carriers recognized under federal law, but not including any aircraft described in subdivision 4;

4. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and otherwise used for educational purposes (including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such flights necessary for testing, maintaining, or preparing such aircraft for safe operation), shall constitute a new class of property. Such class of property shall not include any aircraft used for commercial purposes, including transportation and other services for a fee;

5. All other aircraft not included in subdivisions A 2, A 3, or A 4 and flight simulators;

6. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation purposes as provided in subsection C of § 46.2-730;

7. Tangible personal property used in a research and development business;

8. Heavy construction machinery not used for business purposes, including land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural activity equipment and ditch and other types of diggers;

9. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any other alternative energy source for use in manufacturing and any cogeneration equipment purchased to achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment shall include, without limitation, such equipment purchased by firms engaged in the business of generating electricity or steam, or both;

10. Vehicles without motive power, used or designed to be used as manufactured homes as defined in § 36-85.3;

11. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses;

12. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes only;

13. Privately owned vans with a seating capacity of not less than seven nor more than 15 persons, including the driver, used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

14. Motor vehicles specially equipped to provide transportation for physically handicapped individuals;

15. Motor vehicles (i) owned by members of a volunteer emergency medical services agency or a member of a volunteer fire department or (ii) leased by volunteer emergency medical services personnel or a member of a volunteer fire department if the volunteer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is owned by each volunteer member who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member, or leased by each volunteer member who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member if the volunteer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, may be specially classified under this section, provided the volunteer regularly responds to emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief of the volunteer emergency medical services agency or volunteer fire department, that the volunteer is an individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or a member of the volunteer fire department who regularly responds to calls or regularly performs other duties for the emergency medical services agency or fire department, and the motor vehicle owned or leased by the volunteer is identified. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the volunteer, to accept a certification after the January 31 deadline. In any county that prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may be certified and classified pursuant to this subsection when the vehicle certified as of the immediately prior January date is transferred during the tax year;

16. Motor vehicles (i) owned by auxiliary members of a volunteer emergency medical services agency or volunteer fire department or (ii) leased by auxiliary members of a volunteer emergency medical services agency or volunteer fire department if the auxiliary member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by each auxiliary volunteer fire department or emergency medical services agency member may be specially classified under this section. The auxiliary member shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief of the volunteer emergency medical services agency or volunteer fire department, that the volunteer is an auxiliary member of the volunteer emergency medical services agency or fire department who regularly performs duties for the emergency medical services agency or fire department, and the motor vehicle is identified as regularly used for such purpose; however, if a volunteer meets the definition of "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member and an auxiliary member are members of the same household, that household shall be allowed no more than two special classifications under this subdivision or subdivision 15. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the auxiliary member, to accept a certification after the January 31 deadline;

17. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound persons or provide transportation to senior or handicapped citizens in the community to carry out the purposes of the nonprofit organization;

18. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers as defined in § 46.2-1500, which are used for recreational purposes only, and privately owned trailers as defined in § 46.2-100, which are designed and used for the transportation of horses except those trailers described in subdivision A 11 of § 58.1-3505;

19. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of, one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written statement to the commissioner of revenue or other assessing officer from the Department of Veterans Services that the veteran has been so designated or classified by the Department of Veterans Services as to meet the requirements of this section, and that his disability is service-connected. For purposes of this section, a person is blind if he meets the provisions of § 46.2-100;

20. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is

regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially classified under this section. In order to qualify for such classification, any auxiliary police officer who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary police officer or from the official who has appointed such auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

21. Until the first to occur of June 30, 2019, or the date that a special improvements tax is no longer levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District created pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used in manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement District, provided that such business personal property is put into service within the District on or after July 1, 1999;

22. Motor vehicles which use clean special fuels as defined in § 46.2-749.3, which shall not include any vehicle described in subdivision 38 or 40;

23. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility that is properly licensed by the federal government, the Commonwealth, or both, and that is properly zoned for such use. "Wild animals" means any animals that are found in the wild, or in a wild state, within the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals that are found in the wild, or in a wild state, and are native to a foreign country;

24. Furniture, office, and maintenance equipment, exclusive of motor vehicles, that are owned and used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and that is used by that organization for the purpose of maintaining or using the open or common space within a residential development;

25. Motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce;

26. All tangible personal property employed in a trade or business other than that described in subdivisions A 1 through A 20, except for subdivision A 18, of § 58.1-3503;

27. Programmable computer equipment and peripherals employed in a trade or business;

28. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational purposes only;

29. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for recreational purposes only;

30. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes only;

31. Tangible personal property used in the provision of Internet services. For purposes of this subdivision, "Internet service" means a service, including an Internet Web-hosting service, that enables users to access content, information, electronic mail, and the Internet as part of a package of services sold to customers;

32. Motor vehicles (i) owned by persons who serve as auxiliary, reserve, volunteer, or special deputy sheriffs or (ii) leased by persons who serve as auxiliary, reserve, volunteer, or special deputy sheriffs if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. For purposes of this subdivision, the term "auxiliary deputy sheriff" means auxiliary, reserve, volunteer, or special deputy sheriff. One motor vehicle that is regularly used by each auxiliary deputy sheriff to respond to auxiliary deputy sheriff duties may be specially classified under this section. In order to qualify for such classification, any auxiliary deputy sheriff who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary deputy sheriff or from the official who has appointed such auxiliary deputy sheriff. That certification shall state that the applicant is an auxiliary deputy sheriff who regularly uses a motor vehicle to respond to such auxiliary duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

33. Forest harvesting and silvicultural activity equipment;

34. Equipment used primarily for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as defined in § 32.1-162.21 or for products or purposes related to human embryo stem cells. For purposes of this section, biotechnology equipment means equipment directly used in activities associated with the science of living things;

35. Boats or watercraft weighing less than five tons, used for business purposes only;

36. Boats or watercraft weighing five tons or more, used for business purposes only;

37. Tangible personal property which is owned and operated by a service provider who is not a CMRS provider and is not licensed by the FCC used to provide, for a fee, wireless broadband Internet service. For purposes of this subdivision, "wireless broadband Internet service" means a service that enables customers to access, through a wireless connection at an upload or download bit rate of more than one megabyte per second, Internet service, as defined in § 58.1-602, as part of a package of services sold to customers;

38. Low-speed vehicles as defined in § 46.2-100;

39. Motor vehicles with a seating capacity of not less than 30 persons, including the driver;

40. Motor vehicles powered solely by electricity;

41. Tangible personal property designed and used primarily for the purpose of manufacturing a product from renewable energy as defined in § ~~56-576~~ *56-1*;

42. Motor vehicles leased by a county, city, town, or constitutional officer if the locality or constitutional officer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle;

43. Computer equipment and peripherals used in a data center. For purposes of this subdivision, "data center" means a facility whose primary services are the storage, management, and processing of digital data and is used to house (i) computer and network systems, including associated components such as servers, network equipment and appliances, telecommunications, and data storage systems; (ii) systems for monitoring and managing infrastructure performance; (iii) equipment used for the transformation, transmission, distribution, or management of at least one megawatt of capacity of electrical power and cooling, including substations, uninterruptible power supply systems, all electrical plant equipment, and associated air handlers; (iv) Internet-related equipment and services; (v) data communications connections; (vi) environmental controls; (vii) fire protection systems; and (viii) security systems and services;

44. Motor vehicles (i) owned by persons who serve as uniformed members of the Virginia Defense Force pursuant to Article 4.2 (§ 44-54.4 et seq.) of Chapter 1 of Title 44 or (ii) leased by persons who serve as uniformed members of the Virginia Defense Force pursuant to Article 4.2 (§ 44-54.4 et seq.) of Chapter 1 of Title 44 if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by a uniformed member of the Virginia Defense Force to respond to his official duties may be specially classified under this section. In order to qualify for such classification, any person who applies for such classification shall identify the vehicle for which the classification is sought and shall furnish to the commissioner of the revenue or other assessing officer a certification from the Adjutant General of the Department of Military Affairs under § 44-11. That certification shall state that (a) the applicant is a uniformed member of the Virginia Defense Force who regularly uses a motor vehicle to respond to his official duties, and (b) the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of the revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

45. If a locality has adopted an ordinance pursuant to subsection D of § 58.1-3703, tangible personal property of a business that qualifies under such ordinance for the first two tax years in which the business is subject to tax upon its personal property pursuant to this chapter. If a locality has not adopted such ordinance, this classification shall apply to the tangible personal property for such first two tax years of a business that otherwise meets the requirements of subsection D of § 58.1-3703;

46. Miscellaneous and incidental tangible personal property employed in a trade or business that is not classified as machinery and tools pursuant to Article 2 (§ 58.1-3507 et seq.), merchants' capital pursuant to Article 3 (§ 58.1-3509 et seq.), or short-term rental property pursuant to Article 3.1 (§ 58.1-3510.4 et seq.), and has an original cost of less than $500. A county, city, or town shall allow a taxpayer to provide an aggregate estimate of the total cost of all such property owned by the taxpayer that qualifies under this subdivision, in lieu of a specific, itemized list; and

47. Commercial fishing vessels and property permanently attached to such vessels.

B. The governing body of any county, city or town may levy a tax on the property enumerated in subsection A at different rates from the tax levied on other tangible personal property. The rates of tax and the rates of assessment shall (i) for purposes of subdivisions A 1, 2, 3, 4, 5, 6, 8, 11 through 20, 22 through 24, and 26 through 47, not exceed that applicable to the general class of tangible personal property, (ii) for purposes of subdivisions A 7, 9, 21, and 25, not exceed that applicable to machinery and tools, and (iii) for purposes of subdivision A 10, equal that applicable to real property. If an item of personal property is included in multiple classifications under subsection A, then the rate of tax shall be the lowest rate assigned to such classifications.

C. Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is defined in § 58.1-3523, (i) included in any separate class of property in subsection A and (ii) assessed for tangible personal property taxes by a county, city, or town receiving a payment from the Commonwealth under Chapter 35.1 (§ 58.1-3523 et seq.) for providing tangible personal property tax relief, the county, city, or town may levy the tangible personal property tax on such qualifying vehicle at a rate not to exceed the rates of tax and rates of assessment required under such chapter.

§ 58.1-3814. Water or heat, light and power companies.

A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.), which tax shall not be imposed at a rate in excess of 20 percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of $15 per month for residential customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more. For taxable years beginning on and after January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be imposed pursuant to subsections C through J only.

B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure already in existence, shall not be effective until 60 days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

C. Any county, city or town may impose a tax on the consumers of services provided within its jurisdiction by any electric light and power, water or gas company owned by another municipality; provided, that no county shall be authorized under this section to impose a tax within a municipality on consumers of services provided by an electric light and power, water or gas company owned by that municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.), provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district or service authority providing water or sewer services or served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself, or (ii) constitutes a special school district and is operated as a special school district under a town school board of three members appointed by the town council.

Any county, city or town may provide for an exemption from the tax for any public safety answering point as defined in § 58.1-3813.1.

Any municipality required to collect a tax imposed under authority of this section for another city or county or town shall be entitled to a reasonable fee for such collection.

D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply within the limits of any tier-city located in such county, as may be provided in the agreement or plan of consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or services, provided that the combined county and tier-city rates do not exceed the maximum permitted by state law.

E. The tax authorized by this section shall not apply to:

1. Utility sales of products used as motor vehicle fuels; or

2. Natural gas used to generate electricity by a public utility as defined in § 56-265.1 or an electric cooperative as defined in § 56-231.15.

F. 1. Any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2.

The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not exceed the limits set forth in this subsection. The provider of billing services shall bill the tax to all users who are subject to the tax and to whom it bills for electricity service, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of

electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. The current service provider shall provide to localities no later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to $3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to kilowatt hours. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received from each class of nonresidential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of kilowatt hours used, and the amount of consumer utility tax paid in calendar year 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt hour rates for nonresidential consumers shall not apply after January 1, 2004. On or before October 31, 2000, any locality imposing a tax on consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J. Notice of such amendment shall be provided to service providers in a manner consistent with subsection B except that "registered agent of the provider of billing services" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

2. For purposes of this section, "kilowatt hours delivered" shall mean in the case of ~~eligible customer-generators~~ *distributed electricity generation owners*, as defined in § ~~56-594~~ *56-641*, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

G. Until the consumer pays the tax to such provider of billing services, the tax shall constitute a debt to the locality. If any consumer receives and pays for electricity but refuses to pay the tax on the bill that is imposed by a locality, the provider of billing services shall notify the locality of the name and address of such consumer. If any consumer fails to pay a bill issued by a provider of billing services, including the tax imposed by a locality as stated thereon, the provider of billing services shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the appropriate locality. After the consumer pays the tax to the provider of billing services, the taxes shall be deemed to be held in trust by such provider of billing services until remitted to the localities.

H. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers, taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. Current pipeline distribution companies and gas utilities shall provide to localities not later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to $3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received and due from each of the nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on nonresidential customers up to the amount authorized by subsection A.

On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend

its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J of this section. Notice of such amendment shall be provided to pipeline distribution companies and gas utilities in a manner consistent with subsection B except that "registered agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

I. Until the consumer pays the tax to such gas utility or pipeline distribution company, the tax shall constitute a debt to the locality. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the locality, the gas utility or pipeline distribution company shall notify the localities of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a gas utility or pipeline distribution company, including the tax imposed by a locality, the gas utility or pipeline distribution company shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for gas service and the tax and (ii) remit the tax portion to the appropriate locality. After the consumer pays the tax to the gas utility or pipeline distribution company, the taxes shall be deemed to be held in trust by such gas utility or pipeline distribution company until remitted to the localities.

J. For purposes of this section:

"Class of consumers" means a category of consumers served under a rate schedule established by the pipeline distribution company and approved by the State Corporation Commission.

"Gas utility" has the same meaning as provided in § 56-235.8.

"Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

"Service provider" and "provider of billing services" have the same meanings as provided in subsection E of § 58.1-2901, and "class" of consumers means a category of consumers defined as a class by their service provider.

K. Nothing in this section shall prohibit a locality from enacting an ordinance or other local law to allow such locality to impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities, beginning at such time as natural gas service is first made available in such locality. The maximum amount of tax imposed on residential consumers based on CCF delivered monthly to consumers shall not exceed $3 per month. The maximum tax rate imposed by such locality on nonresidential consumers based on CCF delivered monthly to consumers shall not exceed an average of the tax rates on nonresidential consumers of natural gas in effect (at the time natural gas service is first made available in such locality) in localities whose residents are being provided natural gas from the same pipeline distribution company or gas utility or both that is also providing natural gas to the residents of such locality. Beginning January 1, 2004, the tax rates for residential and nonresidential consumers of natural gas in such locality shall be determined in accordance with the provisions of subsection H.

§ 62.1-44.15:21. Impacts to wetlands.

A. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

B. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions and may be met through (i) wetland creation or restoration, (ii) purchase or use of mitigation bank credits pursuant to § 62.1-44.15:23, (iii) contribution to the Wetland and Stream Replacement Fund established pursuant to § 62.1-44.15:23.1 to provide compensation for impacts to wetlands, streams, or other state waters that occur in areas where neither mitigation bank credits nor credits from a Board-approved fund that have met the success criteria are available at the time of permit application, or (iv) contribution to a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions. The Board shall evaluate the appropriate compensatory mitigation option on a case-by-case basis with consideration for which option is practicable and ecologically and environmentally preferable, including, in terms of replacement of acreage and functions, which option offers the greatest likelihood of success and avoidance of temporal loss of acreage and function. This evaluation shall be consistent with the U.S. Army Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. Part 332). When utilized in conjunction with creation, restoration, or mitigation bank credits, compensation may incorporate (a) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (b) preservation of wetlands.

C. The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands.

The Board shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this article for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland.

D. The Board shall develop general permits for such activities in wetlands as it deems appropriate. General permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. The Board is authorized to waive the requirement for a general permit or deem an activity in compliance with a general permit when it determines that an isolated wetland is of minimal ecological value. The Board shall develop general permits for:

1. Activities causing wetland impacts of less than one-half of an acre;

2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission, except for construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, *and* 56-265.2:1~~, and 56-580~~ to ensure that consultation on wetland impacts occurs prior to siting determinations;

3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and sand mining;

4. Virginia Department of Transportation or other linear transportation projects; and

5. Activities governed by nationwide or regional permits approved by the Board and issued by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board any copies of preconstruction notification, postconstruction report, and certificate of compliance required by the U.S. Army Corps of Engineers.

E. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing. In addition, for an individual permit application related to an application to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) for construction of any natural gas transmission pipeline greater than 36 inches inside diameter, the Board shall complete its consideration within the one-year period established under 33 U.S.C. § 1341(a).

F. Within 15 days of receipt of a general permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. A determination that an application is complete shall not mean the Board will issue the permit but means only that the applicant has submitted sufficient information to process the application. The Board shall deny, approve, or approve with conditions any application for coverage under a general permit within 45 days of receipt of a complete preconstruction application. The application shall be deemed approved if the Board fails to act within 45 days.

G. No Virginia Water Protection Permit shall be required for impacts to wetlands caused by activities governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This section shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities that are incidental to an occupant's ongoing residential use of property and of minimal ecological impact. The Board shall develop criteria governing this exemption and shall specifically identify the activities meeting these criteria in its regulations.

H. No Virginia Water Protection Permit shall be required for impacts caused by the construction or maintenance of farm or stock ponds, but other permits may be required pursuant to state and federal law. For purposes of this exclusion, farm or stock ponds shall include all ponds and impoundments that do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§ 10.1-604 et seq.) of Chapter 6 pursuant to normal agricultural or silvicultural activities.

I. No Virginia Water Protection Permit shall be required for wetland and open water impacts to a stormwater management facility that was created on dry land for the purpose of conveying, treating, or

storing stormwater, but other permits may be required pursuant to local, state, or federal law. The Department shall adopt guidance to ensure that projects claiming this exemption create no more than minimal ecological impact.

J. An individual Virginia Water Protection Permit shall be required for impacts to state waters for the construction of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). For purposes of this subsection:

1. Each wetland and stream crossing shall be considered as a single and complete project; however, only one individual Virginia Water Protection Permit addressing all such crossings shall be required for any such pipeline. Notwithstanding the requirement for only one such individual permit addressing all such crossings, individual review of each proposed water body crossing with an upstream drainage area of five square miles or greater shall be performed.

2. All pipelines shall be constructed in a manner that minimizes temporary and permanent impacts to state waters and protects water quality to the maximum extent practicable, including by the use of applicable best management practices that the Board determines to be necessary to protect water quality.

3. The Department shall assess an administrative charge to any applicant for such project to cover the direct costs of services rendered associated with its responsibilities pursuant to this subsection. This administrative charge shall be in addition to any fee assessed pursuant to § 62.1-44.15:6.

§ 67-101. Energy objectives.

The Commonwealth recognizes each of the following objectives pertaining to energy issues will advance the health, welfare, and safety of the residents of the Commonwealth:

1. Ensuring an adequate energy supply and a Virginia-based energy production capacity;

2. Minimizing the Commonwealth's long-term exposure to volatility and increases in world energy prices through greater energy independence;

3. Ensuring the availability of reliable energy at costs that are reasonable and in quantities that will support the Commonwealth's economy;

4. Managing the rate of consumption of existing energy resources in relation to economic growth;

5. Establishing sufficient supply and delivery infrastructure to maintain reliable energy availability in the event of a disruption occurring to a portion of the Commonwealth's energy matrix;

6. Using energy resources more efficiently;

7. Facilitating conservation;

8. Optimizing intrastate and interstate use of energy supply and delivery to maximize energy availability, reliability, and price opportunities to the benefit of all user classes and the Commonwealth's economy as stated in subdivision 2 of § 67-100;

9. Increasing Virginia's reliance on sources of energy that, compared to traditional energy resources, are less polluting of the Commonwealth's air and waters;

10. Researching the efficacy, cost, and benefits of reducing, avoiding, or sequestering the emissions of greenhouse gases produced in connection with the generation of energy;

11. Removing impediments to the use of abundant low-cost energy resources located within and outside the Commonwealth and ensuring the economic viability of the producers, especially those in the Commonwealth, of such resources;

12. Developing energy resources and facilities in a manner that does not impose a disproportionate adverse impact on economically disadvantaged or minority communities;

13. Recognizing the need to foster those economically developable alternative sources of energy that can be provided at market prices as vital components of a diversified portfolio of energy resources; and

14. Increasing Virginia's reliance on and production of sustainably produced biofuels made from traditional agricultural crops and other feedstocks, such as winter cover crops, warm season grasses, fast-growing trees, algae or other suitable feedstocks grown in the Commonwealth that will create jobs and income, produce clean-burning fuels that will help to improve air quality, and provide the new markets for Virginia's silvicultural and agricultural products needed to preserve farm employment, conserve farmland and forestland, and increase implementation of silvicultural and agricultural best management practices to protect water quality.

~~Except as provided in subsection D of § 56-585.1, nothing in this section shall be deemed to abrogate or modify in any way the provisions of the Virginia Electric Utility Regulation Act (§ 56-576 et seq.).~~

§ 67-1100. Definitions.

As used in this chapter, unless the context requires otherwise:

"Commission" means the State Corporation Commission.

"Distribution facilities" includes poles and wires, or cables, or pipelines or other underground conduits by which a renewable generator is able to (i) supply electricity generated at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy

facility to customers, or (iii) supply landfill gas it collects to customers or a natural gas distribution or transmission pipeline.

"Locality" has the meaning ascribed thereto in § 15.2-102.

"Public highway" means, for purposes of computing the public rights-of-way use fee, the centerline mileage of highways and streets that are part of the primary state highway system as defined in § 33.2-100, the secondary state highway system as defined in §§ 33.2-100 and 33.2-324, the highways of those cities and certain towns defined in § 33.2-319, and the highways and streets maintained and operated by counties that have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that have not elected to return.

"Public rights-of-way use fee" means the fee chargeable to a renewable generator for the occupation and use of public streets, roads, highways, works, turnpikes, streets, avenues, and alleys in the Commonwealth by a locality or the Commonwealth Transportation Board for a renewable generator for its distribution facilities.

"Renewable energy facility" means (i) an electrical generation facility that produces not more than 2 megawatts peak net power output to the distribution grid, which electricity is generated only from a renewable energy source; (ii) a steam reduction facility with a rated capacity of not more than 5,000 mmBtus per hour that produces steam only from a renewable energy source; or (iii) a solid waste management facility permitted by the Department of Environmental Quality from which landfill gas is transmitted or distributed off premises.

"Renewable energy source" means energy derived from any source specified in the definition of renewable energy in § ~~56-576~~ *56-1*.

"Renewable generator" means a person that (i) does not have the power of a public service corporation to acquire rights-of-way, easements, or other interests in lands as provided in § 56-49 and (ii) operates a renewable energy facility.

"Restrictions or requirements concerning the use of the public rights-of-way" includes permitting processes; requirements regarding notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections. Such phrase shall not include any existing franchise fee or public rights-of-way use fee.

§ 67-1206. Transmission of power from offshore wind energy projects.

A. The ~~incumbent, investor-owned~~ *electric transmission and distribution* utility for the onshore service territory adjacent to any offshore wind generation project shall, at the request of the Department of Mines, Minerals and Energy, initiate a transmission study. Such utility shall initiate the transmission study no more than 30 days following the request of the Department of Mines, Minerals and Energy, and shall report to the Department of Mines, Minerals and Energy within 180 days of the request. The Department of Mines, Minerals and Energy shall report the results of the study to the Authority. The Department of Mines, Minerals and Energy shall request the study no later than July 31, 2010.

B. Upon receipt of the study, but no later than May 31, 2011, the Authority shall recommend such actions as it deems appropriate to facilitate transmission of power from offshore wind energy projects.

§ 67-1505. (Expires July 1, 2025) Powers and duties of the Authority.

In addition to such other powers and duties established under this chapter, the Authority shall have the power and duty to:

1. Adopt, use, and alter at will an official seal;

2. Make bylaws for the management and regulation of its affairs;

3. Maintain an office at such place or places within the Commonwealth as it may designate;

4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes for which the Authority is created;

5. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary and fix their compensation to be payable from funds made available to the Authority;

7. Invest its funds as permitted by applicable law;

8. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, or real or personal property for the benefit of the Authority, and receive and accept from the Commonwealth or any state, and from any municipality, county, or other political subdivision thereof and any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made;

9. Enter into agreements with any department, agency, or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of

planning, regulating, and providing for the financing or assisting in the financing of any project;

10. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied;

11. Identify and take steps to mitigate existing state and regulatory or administrative barriers to the development of the solar energy and energy storage industries, including facilitating any permitting processes;

12. Enter into interstate partnerships to develop the solar energy industry, solar energy projects, and energy storage projects;

13. Collaborate with entities, including institutions of higher education, to increase the training and development of the workforce needed by the solar and energy storage industries in the Commonwealth, including industry-recognized credentials and certifications;

14. Conduct any other activities as may seem appropriate to increase solar energy generation in the Commonwealth and the associated jobs and economic development and competitiveness benefits~~, including assisting investor-owned utilities in the planned deployment of at least 400 megawatts of solar energy projects in the Commonwealth by 2020 through entering into agreements in its discretion in any manner provided by law for the purpose of planning and providing for the financing or assisting in the financing of the construction or purchase of such solar energy projects authorized pursuant to § 56-585.1~~;

15. Promote collaborative efforts among Virginia's public and private institutions of higher education in research, development, and commercialization efforts related to energy storage;

16. Monitor relevant developments in energy storage technology and deployment nationally and globally and disseminate relevant information and research results; and

17. Identify and work with the Commonwealth's industries and nonprofit partners in advancing efforts related to the development and commercialization of energy storage.

2. That §§ 15.2-5409, 15.2-5416, 56-235.1:1, 56-235.7, 56-236.1, 56-245.1:2, 56-249.3, 56-249.4, and 56-249.6, Chapter 23 (§§ 56-576 through 56-596.3) of Title 56, Chapter 24 (§§ 56-597, 56-598, and 56-599) of Title 56, and § 67-202.1 of the Code of Virginia are repealed.

3. That Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, are repealed. Pursuant to § 56-1.2 of the Code of Virginia, as amended and reenacted by this act, the seller of electric energy and the retail customer purchasing electric energy according to the terms of a third-party power purchase agreement or distributed electric generation lease agreement are not public utilities, public service companies, or public service corporations as defined in § 56-1 of the Code of Virginia, as amended and reenacted by this act.

4. That the provisions of the third enactment of this act shall not affect the validity of any third-party power purchase agreement entered into prior to July 1, 2020, under a pilot project authorized pursuant to Chapters 358 and 382 of the Acts of Assembly of 2013 as amended by Chapter 803 of the Acts of Assembly of 2017.

5. That any customer of an electric utility that is a participant in a program (i) established under former § 56-585.4 of the Code of Virginia shall continue to participate in such a program under the provisions of §§ 56-642 and 56-647 of the Code of Virginia as created by this act; (ii) established under former § 56-594 of the Code of Virginia shall continue to participate in such a program under the provisions of §§ 56-643 and 56-647 of the Code of Virginia as created by this act; (iii) established under former § 56-594.1 of the Code of Virginia shall continue to participate in such a program under the provisions of §§ 56-644 and 56-647 of the Code of Virginia as created by this act; (iv) established under former § 56-594.2 of the Code of Virginia shall continue to participate in such a program under the provisions of §§ 56-645 and 56-647 of the Code of Virginia as created by this act; or (v) established under former § 56-594.01 of the Code of Virginia shall continue to participate in such a program under the provisions of §§ 56-645 and 56-647 of the Code of Virginia as created by this act.