

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 56-577, 56-580, 56-581.1, 56-582, 56-585, 56-590, 58.1-2901, 58.1-2902, and 58.1-3814 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 23 of Title 56 a section numbered 56-596, relating to the Virginia Electric Utility Restructuring Act; competition for electric services; default service; functional separation; collection of taxes on consumption of electricity.

[S 1420]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-577, 56-580, 56-581.1, 56-582, 56-585, 56-590, 58.1-2901, 58.1-2902, and 58.1-3814 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 23 of Title 56 a section numbered 56-596 as follows:

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

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

1. On or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

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

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

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

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

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

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

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

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

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

C. Except as may be otherwise provided in this chapter, prior to and during the period of transition to retail competition, the Commission may conduct pilot programs encompassing retail customer choice of electric energy suppliers, consistent with its authority otherwise provided in this title and the provisions of this chapter.

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

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

57 § 56-580. Transmission and distribution of electric energy.

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

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

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

68 D. The Commission may permit the construction and operation of electrical generating facilities upon
69 a finding that such generating facility and associated facilities including transmission lines and
70 equipment (i) will have no material adverse effect upon reliability of electric service provided by any
71 regulated public utility and (ii) are not otherwise contrary to the public interest. In review of its petition
72 for a certificate to construct and operate a generating facility described in this subsection, the
73 Commission shall give consideration to the effect of the facility and associated facilities, including
74 transmission lines and equipment, on the environment and establish such conditions as may be desirable
75 or necessary to minimize adverse environmental impact as provided in § 56-46.1.

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

82 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or
83 operated by a municipality as of July 1, 1999, nor shall any provision of this chapter apply to any such
84 electric utility unless (i) that municipality elects to have this chapter apply to that utility or (ii) that
85 utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer
86 outside the geographic area that was served by such municipality as of July 1, 1999. *If an electric utility
87 owned or operated by a municipality as of July 1, 1999, is made subject to the provisions of this
88 chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter
89 applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.*

90 § 56-581.1. Competitive retail electric billing and metering.

91 A. ~~On or before Effective January 1, 2001 2002, the Commission~~ (i) distributors shall recommend to
92 the Legislative Transition Task Force whether metering services, offer consolidated billing services, or
93 both, for which competition has not been otherwise authorized by law, may be provided by persons
94 licensed to provide such services. The Commission's recommendation under this subsection as to the
95 appropriateness of and date of commencement of competition (i) shall include a draft plan for
96 implementation of competition for metering services and billing services and (ii) may vary by service,
97 type of seller, region, incumbent electric utility, and customer group. Such recommendation and draft
98 plan, which shall be developed after notice and an opportunity for hearing, to licensed suppliers,
99 aggregators, and retail customers, and (ii) licensed suppliers and aggregators shall be permitted to bill
100 all retail customers separately for services rendered on and after the first regular meter reading date
101 after January 1, 2002, subject to conditions, regulations, and licensing requirements established by the
102 Commission.

103 B. *Effective January 1, 2003, licensed suppliers and aggregators may offer consolidated billing
104 service to distributors and retail customers for services rendered on and after the first regular meter
105 reading date after January 1, 2003, subject to conditions, regulations, and licensing requirements
106 established by the Commission.*

107 C. *Upon application by a distributor or upon its own motion, the Commission may delay any element
108 of the competitive provision of billing services to retail customers for the period of time necessary, but
109 no longer than one year, to resolve issues arising from considerations of billing accuracy, timeliness,
110 quality, consumer readiness, or adverse effects upon development of competition in electric service. The
111 Commission shall report any such delays and the underlying reasons therefor to the Legislative
112 Transition Task Force within a reasonable time.*

113 D. *The Commission shall promulgate such rules and regulations as may be necessary to implement
114 the provisions of this section in a manner that is consistent with its Recommendation and Draft Plan
115 filed with the Legislative Transition Task Force on December 12, 2000, to facilitate the development of
116 effective competition in electric service for all customer classes, and to ensure reasonable levels of
117 billing accuracy, timeliness, and quality, and adequate consumer readiness and protection. Such rules*

118 *and regulations shall include provisions regarding the licensing of persons seeking to sell, offering to*
 119 *sell, or selling competitive billing services, pursuant to the licensure requirements of § 56-587.*

120 *E. The Commission shall implement the provision of competitive metering services by licensed*
 121 *providers for large industrial and large commercial customers of investor-owned distributors on January*
 122 *1, 2002, and may approve such services for residential and small business customers of investor-owned*
 123 *distributors on or after January 1, 2003, as determined to be in the public interest by the Commission.*
 124 *Such implementation and approvals shall:*

125 1. Be consistent with the goal of facilitating the development of effective competition in electric
 126 service for all customer classes;

127 2. Take into account the readiness of customers and suppliers to buy and sell such services;

128 3. Take into account the technological feasibility of furnishing any such services on a competitive
 129 basis;

130 4. Take into account whether reasonable steps have been or will be taken to educate and prepare
 131 customers for the implementation of competition for any such services;

132 5. Not jeopardize the safety, reliability or quality of electric service;

133 6. Consider the degree of control exerted over utility operations by utility customers;

134 7. Not adversely affect the ability of an incumbent electric utility authorized or obligated to provide
 135 electric service to customers who do not buy such services from competitors to provide electric service
 136 to such customers at reasonable rates; ~~and~~

137 8. Give due consideration to the potential effects of such determinations on utility tax collection by
 138 state and local governments in the Commonwealth; *and*

139 9. *Ensure the technical and administrative readiness of a distributor to coordinate and facilitate the*
 140 *provision of competitive metering services for its customers.*

141 ~~B. Competition for metering services, billing services, or both, may be implemented concurrently or~~
 142 ~~pursuant to separate schedules as determined by the General Assembly.~~

143 ~~C. If, on or before January 1, 2001, the Commission has not recommended that competition is~~
 144 ~~appropriate for (i) metering services, (ii) billing services, or (iii) any portion of either service, the~~
 145 ~~Commission shall continue to consider such matters and report thereon to the Legislative Transition~~
 146 ~~Task Force no less frequently than annually until such services are made competitive.~~

147 *Upon the reasonable request of a distributor, the Commission shall delay the provision of*
 148 *competitive metering service in such distributor's service territory until January 1, 2003, for large*
 149 *industrial and large commercial customers, and after January 1, 2004, for residential and small*
 150 *business customers.*

151 *F. The Commission shall promulgate such rules and regulations as may be necessary to implement*
 152 *the authorization related to competitive metering services provided for in subsection E. Such rules and*
 153 *regulations shall include provisions regarding the licensing of persons seeking to sell, offering to sell, or*
 154 *selling competitive metering services, pursuant to the licensure requirements of § 56-587.*

155 ~~D. G. Upon enactment of legislation making competitive metering services, billing services, or both,~~
 156 ~~An incumbent electric utility shall undertake such coordination, coordinate with persons licensed to~~
 157 ~~provide such service competitive metering service, billing services, or both, as the Commission deems~~
 158 ~~reasonably necessary to the development of such competition, provided that the reasonable costs of such~~
 159 ~~coordination are recovered by such utility. The foregoing shall apply to an affiliate of an incumbent~~
 160 ~~electric utility if such affiliate controls a resource that is necessary to the coordination required of the~~
 161 ~~incumbent electric utility by this subsection.~~

162 ~~E. Any person seeking to sell, offering to sell, or selling competitive metering services, competitive~~
 163 ~~billing services, or both, shall be subject to the licensure requirements of § 56-587.~~

164 ~~H. Notwithstanding the provisions of § 56-582, the Commission shall allow a distributor to recover~~
 165 ~~its costs directly associated with the implementation of billing or metering competition through a tariff~~
 166 ~~for all licensed suppliers, but not those that would be incurred by such utilities in any event as part of~~
 167 ~~the restructuring under this Act. The Commission shall also determine the most appropriate method of~~
 168 ~~recovering such costs through a tariff for such licensed suppliers; however, such method shall not~~
 169 ~~unreasonably affect any customer for which the service is not made competitive.~~

170 ~~F. I. Upon enactment of legislation making competitive a service presently provided by an incumbent~~
 171 ~~electric utility, The Commission shall adjust the rates for any noncompetitive services provided by such~~
 172 ~~utility a distributor so that such rates do not reflect costs associated with or properly allocable to the~~
 173 ~~service made subject to competition. Such adjustment may be accomplished through unbundled rates,~~
 174 ~~bill credits, the distributor's tariffs for licensed suppliers, or other methods as determined by the~~
 175 ~~Commission.~~

176 *J. Municipal electric utilities shall not be required to provide consolidated billing services to licensed*
 177 *suppliers, aggregators or retail customers. Municipal electric utilities and utility consumer services*
 178 *cooperatives shall not be required to undertake coordination of the provision of consolidated or direct*

179 *billing services by suppliers and aggregators; however, the exemptions set forth in this subsection shall*
 180 *not apply if any such municipal electric utility or utility consumer services cooperative, or its affiliate,*
 181 *offers competitive electric energy supply to retail customers in the service territory of any other Virginia*
 182 *incumbent electric utility. The Commission may permit any municipal electric utility or utility consumer*
 183 *services cooperative that pursues such competitive activity to maintain such exemption upon application*
 184 *to the Commission demonstrating good cause for relief. In addition, upon petition by a utility consumer*
 185 *services cooperative, the Commission may approve the provision of competitive metering services by*
 186 *licensed providers for large industrial and large commercial customers of such cooperative on or after*
 187 *January 1, 2002, and for residential and small business customers of such cooperative on or after*
 188 *January 1, 2003, as determined to be in the public interest by the Commission consistent with the*
 189 *criteria set forth in subsection E.*

190 § 56-582. Rate caps.

191 A. The Commission shall establish capped rates, effective January 1, 2001, and expiring on July 1,
 192 2007, for each service territory of every incumbent utility as follows:

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

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

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

219 B. The Commission may adjust such capped rates in connection with the following: (i) utilities'
 220 recovery of fuel costs pursuant to § 56-249.6, (ii) any changes in the taxation by the Commonwealth of
 221 incumbent electric utility revenues, (iii) any financial distress of the utility beyond its control, (iv) with
 222 respect to cooperatives that were not members of a power supply cooperative on January 1, 1999, and as
 223 long as they do not become members, their cost of purchased wholesale power and discounts from
 224 capped rates to match the cost of providing distribution services, and (v) with respect to cooperatives
 225 that were members of a power supply cooperative on January 1, 1999, their recovery of fuel costs,
 226 through the wholesale power cost adjustment clauses of their tariffs pursuant to § ~~56-226~~ 56-231.33.
 227 Notwithstanding the provisions of § 56-249.6, the Commission may authorize tariffs that include
 228 incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting
 229 retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined
 230 by the Commission to be fair and reasonable to the utility and its customers.

231 C. A utility may petition the Commission to terminate the capped rates to all customers any time
 232 after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an
 233 effectively competitive market for generation services within the service territory of that utility. If the
 234 capped rates are continued after January 1, 2004, an incumbent electric utility which is not, as of the
 235 effective date of this chapter, bound by a rate case settlement adopted by the Commission that extends
 236 in its application beyond January 1, 2002, may petition the Commission for approval of a one-time
 237 change in the nongeneration components of such rates.

238 D. Until the expiration or termination of capped rates as provided in this section, the incumbent
 239 electric utility, consistent with the functional separation plan implemented under § 56-590, shall make

240 electric service available at capped rates established under this section to any customer in the incumbent
 241 electric utility's service territory, including any customer that, until the expiration or termination of
 242 capped rates, requests such service after a period of utilizing service from another supplier.

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

249 § 56-585. Default service.

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

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

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

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

268 3. ~~In the absence of a finding~~ *To the extent that default service is not provided pursuant to a*
 269 *designation under subdivision 2, may require an incumbent electric utility or distribution utility a*
 270 *distributor to provide, in a safe and reliable manner, one or more components of such services, or to*
 271 *form an affiliate to do so, in one or more regions of the Commonwealth, at rates which are fairly*
 272 *compensatory to the utility and which reflect any cost of energy prudently procured, including energy*
 273 *procured from the competitive market determined pursuant to subsection C and for periods specified by*
 274 *the Commission; however, the Commission may not require an incumbent electric utility or distribution*
 275 *utility a distributor, or affiliate thereof, to provide any such services outside the territory in which such*
 276 *utility distributor provides service; and*

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

282 C. ~~The Commission shall~~ *If a distributor is required to provide default services pursuant to*
 283 *subdivision B 3, after notice and opportunity for hearing, the Commission shall periodically, for each*
 284 *distributor, determine the rates, terms and conditions for such default services consistent with the*
 285 *provisions of subdivision B 3 and Chapter 10 (§ 56-232 et seq.) of this title and shall establish such*
 286 *requirements for providers and customers as it finds necessary to promote the reliable and economic*
 287 *provision of such services and to prevent the inefficient use of such services. The Commission may use*
 288 *any rate method that promotes the public interest and may establish different rates, terms and conditions*
 289 *for different classes of customers., taking into account the characteristics and qualifications set forth in*
 290 *subdivision B 1, as follows:*

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

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

300 3. *Prior to a distributor's provision of default service, and upon request of such distributor, the*

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

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

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

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

323 ~~D.~~ E. On or before July 1, 2004, and annually thereafter, the Commission shall determine, after
 324 notice and opportunity for hearing, whether there is a sufficient degree of competition such that the
 325 elimination of default service for particular customers, particular classes of customers or particular
 326 geographic areas of the Commonwealth will not be contrary to the public interest. The Commission shall
 327 report its findings and recommendations concerning modification or termination of default service to the
 328 General Assembly and to the Legislative Transition Task Force, not later than December 1, 2004, and
 329 annually thereafter.

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

340 § 56-590. Divestiture, functional separation and other corporate relationships.

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

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

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

349 3. Consistent with this chapter, the Commission may impose conditions, as the public interest
 350 requires, upon its approval of any incumbent electric utility's plan for functional separation, including
 351 requirements that (i) the incumbent electric utility's generation assets or, *at the election of the incumbent*
 352 *electric utility and if approved by the Commission pursuant to subdivision 4 of this subsection*, their
 353 equivalent ~~remain~~ are made available for electric service during the capped rate period as provided in
 354 § 56-582 and, if applicable, during any period the ~~incumbent electric utility distributor~~ serves as a
 355 default provider as provided for in § 56-585; ~~and~~; (ii) the incumbent electric utility receive Commission
 356 approval for the sale, transfer or other disposition of generation assets during the capped rate period and,
 357 if applicable, during any period the ~~incumbent electric utility distributor~~ serves as a default provider;
 358 *and (iii) any such generation asset sold, transferred, or otherwise disposed of by the incumbent electric*
 359 *utility with Commission approval shall not be further sold, transferred, or otherwise disposed of during*
 360 *the capped rate period and, if applicable, during any period the distributor serves as default provider,*
 361 *without additional Commission approval.*

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

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

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

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

- 387 1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;
- 388 2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;
- 389 3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units;
- 390 and
- 391 4. Establishing codes of conduct detailing permissible relations between functionally separate units.

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

402 F. A transaction described in subsection E shall not:

- 403 1. Substantially lessen competition among the actual or prospective providers of noncompetitive
 404 electric service or of a service which is, or is likely to become, a competitive electric service; or
- 405 2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the
 406 provision of any noncompetitive electric service at just and reasonable rates.

407 G. Except as provided in subdivision B 5 of § 56-590, nothing in this chapter shall be deemed to
 408 abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or
 409 5 (§ 56-88 et seq.) of this title. However, any person subject to the requirements of subsection E that is
 410 also subject to the requirements of Chapter 5 of this title may be exempted from compliance with the
 411 requirements of Chapter 5 of this title.

412 § 56-596. Advancing competition.

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

416 B. By September 1 of each year, the Commission shall report to the Legislative Transition Task
 417 Force and the Governor information on the status of competition in the Commonwealth, the status of the
 418 development of regional competitive markets, and its recommendations to facilitate effective competition
 419 in the Commonwealth as soon as practical. This report shall include any recommendations of actions to
 420 be taken by the General Assembly, the Commission, electric utilities, suppliers, generators, distributors
 421 and regional transmission entities it considers to be in the public interest. Such recommendations shall
 422 include actions regarding the supply and demand balance for generation services, new and existing

423 generation capacity, transmission constraints, market power, suppliers licensed and operating in the
 424 Commonwealth, and the shared or joint use of generation sites.

425 § 58.1-2901. Collection and remittance of tax.

426 A. The ~~service~~ provider of *billing services* shall collect the tax from the consumer by adding it as a
 427 separate charge to the consumer's monthly statement. Until the consumer pays the tax to such ~~service~~
 428 provider of *billing services*, the tax shall constitute a debt of the consumer to the Commonwealth,
 429 localities, and the State Corporation Commission. If any consumer receives and pays for electricity but
 430 refuses to pay the tax on the bill that is imposed by § 58.1-2900, the ~~service~~ provider of *billing services*
 431 shall notify the State Corporation Commission of the name and address of such consumer. If any
 432 consumer fails to pay a bill issued by a ~~service~~ provider of *billing services* including the tax that is
 433 imposed by § 58.1-2900, the ~~service~~ provider of *billing services* shall follow its normal collection
 434 procedures with respect to the charge for electric service and the tax, and upon collection of the bill or
 435 any part thereof shall (i) apportion the net amount collected between the charge for electric service and
 436 the tax and (ii) remit the tax portion to the State Corporation Commission and the appropriate locality.
 437 After the consumer pays the tax to the ~~service~~ provider of *billing services*, the taxes collected shall be
 438 deemed to be held in trust by such provider until remitted to the State Corporation Commission and the
 439 appropriate locality.

440 When determining the amount of tax to collect from consumers of an electric utility that is a
 441 cooperative which purchases, for the purpose of resale within the Commonwealth, electricity from a
 442 federal entity that made payments during such taxable period to the Commonwealth in lieu of taxes in
 443 accordance with a federal law requiring such payments to be calculated on the basis of such federal
 444 entity's gross proceeds from the sale of electricity, the ~~service~~ provider of *billing services* shall deduct
 445 from each of the respective tax amounts calculated in accordance with § 58.1-2900 an amount equal to
 446 the calculated tax amounts multiplied by the ratio that the total cost of the power, including facilities
 447 rental, supplied by said federal entity to said cooperative for resale within the Commonwealth bears to
 448 said cooperative's total operating revenue within the Commonwealth for the taxable period. The State
 449 Corporation Commission may audit the records and books of said cooperative to verify that the tax
 450 imposed by this chapter has been correctly determined and properly remitted.

451 B. A ~~service~~ provider of *billing services* shall remit monthly to the Commission the amount of tax
 452 paid during the preceding month by the ~~service provider's~~ provider of *billing services'* consumers, except
 453 for (i) amounts added on the bills to utilities owned and operated by municipalities which are collected
 454 by the entity providing transmission directly to such utilities (or an association or agency of which the
 455 municipality is a member), which they shall remit directly to the Commission and (ii) the portion which
 456 represents the local consumption tax, which portion shall be remitted to the locality in which the
 457 electricity was consumed and shall be based on such locality's license fee rate which it imposed.
 458 Amounts of the tax that are added on the bills to utilities owned and operated by municipalities, which
 459 are collected by the entity providing transmission directly to such utilities (or an association or agency
 460 of which the municipality is a member), shall be remitted monthly by such entity to the Commission,
 461 except that the portion which represents the local consumption tax shall be remitted to the locality in
 462 which the electricity was consumed and shall be based on such locality's license fee rate which it
 463 imposed.

464 C. The electric utility consumption tax shall be remitted monthly, on or before the last day of the
 465 succeeding month of collection. Those portions of the electric utility consumption tax that relate to the
 466 state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion
 467 that relates to the local consumption tax shall be remitted to the localities. Failure to remit timely will
 468 result in a ten percent penalty.

469 D. Taxes on electricity sales in the year ending December 31, 2000, relating to the local consumption
 470 tax, shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C
 471 shall commence on February 28, 2001.

472 E. For purposes of this section, "service provider" means the person who delivers electricity to the
 473 consumer and "provider of *billing services*" means the person who bills a consumer for electric services
 474 rendered. If both the service provider and another person separately and directly bill a consumer for
 475 electricity service, then the service provider shall be considered the "provider of *billing services*."

476 F. The portion of the electric utility consumption tax relating to the local consumption tax replaces
 477 and precludes localities from imposing a license tax in accordance with § 58.1-3731 and the business,
 478 professional, occupation and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) on electric
 479 suppliers subsequent to December 31, 2000, except as provided in subsection D. If the license fee rate
 480 imposed by a locality is less than the equivalent of the local consumption tax rate component of the
 481 consumption tax paid under subsection A of § 58.1-2900, the excess collected by the Commission shall
 482 constitute additional state consumption tax revenue and shall be remitted by the Commission to the state
 483 treasury.

484 G. The Department of Taxation may audit the books and records of any electric utility owned and
 485 operated by a municipality (or an association or agency of which the municipality is a member) to
 486 verify that the tax imposed by this chapter has been correctly determined and properly remitted to the
 487 Commission.

488 § 58.1-2902. Electric utility consumption tax relating to the special regulatory tax; when not assessed
 489 or assessed only in part.

490 A. The Commission may in the performance of its function and duty in levying the electric utility
 491 consumption tax relating to the special regulatory tax, omit the levy on any portion of the tax fixed in
 492 § 58.1-2900 as is unnecessary within the Commission's sole discretion for the accomplishment of the
 493 objects for which the tax is imposed, including a reasonable margin in the nature of a reserve fund.

494 B. The Commission shall notify ~~all service providers~~ *each provider of billing services, as defined in*
 495 *subsection E of § 58.1-2901*, collecting the tax on consumers of electricity of any change in the electric
 496 utility consumption tax relating to the special regulatory tax not later than the first day of the second
 497 month preceding the month in which the revised rate is to take effect.

498 § 58.1-3814. Water or heat, light and power companies

499 A. Any county, city or town may impose a tax on the consumers of the utility service or services
 500 provided by any water or heat, light and power company or other corporations coming within the
 501 provisions of Chapter 26 (§ 58.1-2600 et seq.) of this title, which tax shall not be imposed at a rate in
 502 excess of twenty percent of the monthly amount charged to consumers of the utility service and shall
 503 not be applicable to any amount so charged in excess of fifteen dollars per month for residential
 504 customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of
 505 limits specified herein may continue to impose such a tax in excess of such limits, but no more. For
 506 taxable years beginning on and after January 1, 2001, any tax imposed by a county, city or town on
 507 consumers of electricity shall be imposed pursuant to subsections C through J of this section only.

508 B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure
 509 already in existence, shall not be effective until sixty days subsequent to written notice by certified mail
 510 from the county, city or town imposing such tax or change thereto, to the registered agent of the utility
 511 corporation that is required to collect the tax.

512 C. Any county, city or town may impose a tax on the consumers of services provided within its
 513 jurisdiction by any electric light and power, water or gas company owned by another municipality;
 514 provided, that no county shall be authorized under this section to impose a tax within a municipality on
 515 consumers of services provided by an electric light and power, water or gas company owned by that
 516 municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated
 517 town located within such county which town imposes a town tax on consumers of utility service or
 518 services provided by any corporation coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.)
 519 of this title, provided that such town (i) provides police or fire protection, and water or sewer services,
 520 provided that any such town served by a sanitary district or service authority providing water or sewer
 521 services or served by the county in which the town is located when such service or services are
 522 provided pursuant to an agreement between the town and county shall be deemed to be providing such
 523 water and sewer services itself, or (ii) constitutes a special school district and is operated as a special
 524 school district under a town school board of three members appointed by the town council.

525 Any county, city or town may provide for an exemption from the tax for any public safety answering
 526 point as defined in § 58.1-3813.1.

527 Any city with a population of not less than 27,000 and not more than 28,500 may provide an
 528 exemption from the tax for any church or religious body entitled to an exemption pursuant to Article 4
 529 (§ 58.1-3650 et seq.) of Chapter 36 of this title.

530 Any municipality required to collect a tax imposed under authority of this section for another city or
 531 county or town shall be entitled to a reasonable fee for such collection.

532 D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply
 533 within the limits of any tier-city located in such county, as may be provided in the agreement or plan of
 534 consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or
 535 services, provided that the combined county and tier-city rates do not exceed the maximum permitted by
 536 state law.

537 E. The tax authorized by this section shall not apply to utility sales of products used as motor
 538 vehicle fuels.

539 F.1. Any county, city or town may impose a tax on consumers of electricity provided by electric
 540 suppliers as defined in § 58.1-400.2.

541 The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not
 542 exceed the limits set forth in this subsection. The ~~service~~ *provider of billing services* shall bill the tax to
 543 all users who are subject to the tax and to whom it ~~delivers bills for~~ *electricity service*, and shall remit
 544 such tax to the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax

545 pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to
 546 consumers of electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to
 547 consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent
 548 practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain
 549 annual revenues being received by localities from such tax at the time of the conversion. *The current*
 550 *service providers provider* shall provide to localities no later than August 1, 2000, information to enable
 551 localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result
 552 of the conversion shall be limited to three dollars per month, except any locality that imposed a higher
 553 maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential
 554 consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as
 555 converted to kilowatt hours. For nonresidential consumers, the initial maximum rate of tax imposed as a
 556 result of the conversion shall be based on the annual amount of revenue received from each class of
 557 nonresidential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour tax
 558 rates imposed on nonresidential consumers shall be based at a class level on such factors as existing
 559 minimum charges, the amount of kilowatt hours used, and the amount of consumer utility tax paid in
 560 calendar year 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt hour
 561 rates for nonresidential consumers shall not apply after January 1, 2004, which is the scheduled date of
 562 completion of the electric deregulation transition period pursuant to the Virginia Electric Utility
 563 Restructuring Act (§ 56-576 et seq.). On or before October 31, 2000, any locality imposing a tax on
 564 consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the
 565 ordinance conforms to the requirements of subsections C through J of this section. Notice of such
 566 amendment shall be provided to service providers in a manner consistent with subsection B of this
 567 section except that "registered agent of the *service provider of billing services*" shall be substituted for
 568 "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of
 569 this subsection shall not be effective before the first meter reading after December 31, 2000, prior to
 570 which time the tax previously imposed by the locality shall be in effect.

571 2. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible
 572 customer-generators, as defined in § 56-594, those kilowatt hours supplied from the electric grid to such
 573 customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such
 574 customer-generators.

575 G. Until the consumer pays the tax to such *service provider of billing services*, the tax shall
 576 constitute a debt to the locality. If any consumer receives and pays for electricity but refuses to pay the
 577 tax on the bill that is imposed by a locality, the *service provider of billing services* shall notify the
 578 locality of the name and address of such consumer. If any consumer fails to pay a bill issued by a
 579 *service provider of billing services*, including the tax imposed by a locality as stated thereon, the *service*
 580 *provider of billing services* shall follow its normal collection procedures with respect to the charge for
 581 electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net
 582 amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the
 583 appropriate locality. After the consumer pays the tax to the *service provider of billing services*, the taxes
 584 shall be deemed to be held in trust by such *service provider of billing services* until remitted to the
 585 localities.

586 H. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline
 587 distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to
 588 consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company
 589 or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and
 590 shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality that
 591 imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount
 592 charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers,
 593 taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i)
 594 avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues
 595 being received by localities from such tax at the time of the conversion. Current pipeline distribution
 596 companies and gas utilities shall provide to localities not later than August 1, 2000, information to
 597 enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as
 598 a result of the conversion shall be limited to three dollars per month, except any locality that imposed a
 599 higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential
 600 consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as
 601 converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of
 602 the conversion shall be based on the annual amount of revenue received and due from each of the
 603 nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that
 604 year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors
 605 as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and

606 due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this
 607 section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in
 608 this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on
 609 nonresidential customers up to the amount authorized by subsection A.

610 On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend
 611 its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of
 612 subsections C through J of this section. Notice of such amendment shall be provided to pipeline
 613 distribution companies and gas utilities in a manner consistent with subsection B except that "registered
 614 agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the
 615 utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not
 616 be effective before the first meter reading after December 31, 2000, prior to which time the tax
 617 previously imposed by the locality shall be in effect.

618 I. Until the consumer pays the tax to such gas utility or pipeline distribution company, the tax shall
 619 constitute a debt to the locality. If any consumer receives and pays for gas but refuses to pay the tax
 620 that is imposed by the locality, the gas utility or pipeline distribution company shall notify the localities
 621 of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a gas utility
 622 or pipeline distribution company, including the tax imposed by a locality, the gas utility or pipeline
 623 distribution company shall follow its normal collection procedures with regard to the charge for the gas
 624 and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount
 625 collected between the charge for gas service and the tax and (ii) remit the tax portion to the appropriate
 626 locality. After the consumer pays the tax to the gas utility or pipeline distribution company, the taxes
 627 shall be deemed to be held in trust by such gas utility or pipeline distribution company until remitted to
 628 the localities.

629 J. For purposes of this section:

630 "Class of consumers" means a category of consumers served under a rate schedule established by the
 631 pipeline distribution company and approved by the State Corporation Commission.

632 "Gas utility" has the same meaning as provided in § 56-235.8.

633 "Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

634 "Service provider" ~~has~~ and "provider of billing services" have the same ~~meaning~~ meanings as
 635 provided in subsection E of § 58.1-2901, and "class" of consumers means a category of consumers
 636 defined as a class by their service provider.

637 **2. That the provisions of clause (iii) of subdivision B 3 of § 56-590 of the Code of Virginia shall**
 638 **not apply to any sale, transfer or disposal of an incumbent electric utility's generation assets that**
 639 **was approved by the Commission pursuant to such subdivision as it was in effect prior to the**
 640 **effective date of this act.**