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HOUSE BILL NO. 3068**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by Delegate Morgan
on February 5, 2007)

(Patron Prior to Substitute—Delegate Hogan)

A BILL to amend and reenact §§ 56-231.24, 56-234.3, 56-235.2, 56-235.6, 56-238, 56-249.6, 56-576, 56-580, 56-585, and 56-594 of the Code of Virginia and to repeal §§ 56-577, 56-578, 56-579, 56-581 through 56-584, 56-586, 56-587 through 56-593, and 56-596 of the Code of Virginia, relating to the regulation of electric utilities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-231.24, 56-234.3, 56-235.2, 56-235.6, 56-238, 56-249.6, 56-576, 56-580, 56-585, and 56-594 of the Code of Virginia are amended and reenacted as follows:

§ 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 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; *or* (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.~~

§ 56-234.3. Approval of expenditures for and monitoring of new generation facilities and projected operation programs 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 Commission shall investigate and monitor the major construction projects of any public utility 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,

60 procedures, designs or planning and recommend to the Commission measures necessary to correct or
61 eliminate such practices, procedures, designs or planning.

62 Consistent with § 56-235.3, any public utility, electric or otherwise, seeking to pass through the cost
63 of any capital project to its customers, shall have the burden of proving that such cost was *or will be*
64 incurred through reasonable, proper and efficient practices, and to the extent that such public utility fails
65 to bear such burden of proof, such costs shall not be passed on to its customers in its rate base *or by*
66 *any other recovery mechanism. If the Commission finds that the public utility meets such burden of*
67 *proof, the Commission shall provide for recovery of such costs through the public utility's rate base or*
68 *through rate surcharges, adders, or other recovery mechanisms as the Commission finds are in the*
69 *public interest.*

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

73 § 56-235.2. All rates, tolls, etc., to be just and reasonable to jurisdictional customers; findings and
74 conclusions to be set forth; alternative forms of regulation for electric companies.

75 A. Any rate, toll, charge or schedule of any public utility operating in this Commonwealth shall be
76 considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls,
77 charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs
78 incurred by the public utility in serving customers within the jurisdiction of the Commission, subject to
79 such normalization for nonrecurring costs and adjustments for ~~known~~ future increases in costs as the
80 Commission may deem reasonable, and a fair return on the public utility's rate base used to serve those
81 jurisdictional customers; (1a) the investor-owned public electric utility has demonstrated that no part of
82 such rates, tolls, charges or schedules includes costs for advertisement, except for advertisements either
83 required by law or rule or regulation, or for advertisements which solely promote the public interest,
84 conservation or more efficient use of energy; and (2) the public utility has demonstrated that such rates,
85 tolls, charges or schedules contain reasonable classifications of customers. Notwithstanding § 56-234, the
86 Commission may approve, either in the context of or apart from a rate proceeding after notice to all
87 affected parties and hearing, special rates, contracts or incentives to individual customers or classes of
88 customers where it finds such measures are in the public interest. Such special charges shall not be
89 limited by the provisions of § 56-235.4. ~~In determining costs of service, the Commission may use the~~
90 ~~test year method of estimating revenue needs, but shall not consider any adjustments or expenses that~~
91 ~~are speculative or cannot be predicted with reasonable certainty.~~ In any Commission order establishing a
92 fair and reasonable rate of return for an investor-owned gas, telephone or electric public utility, the
93 Commission shall set forth the findings of fact and conclusions of law upon which such order is based.

94 B. Upon application of any public service company furnishing electric service or on the
95 Commission's own motion, the Commission may approve after notice to all affected parties and hearing,
96 an alternative form of regulation. Alternatives may include, but are not limited to, the use of price
97 regulation, ranges of authorized returns, categories of services, price indexing or other alternative forms
98 of regulation.

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

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

106 § 56-235.6. Optional performance-based regulation of utilities.

107 A. Notwithstanding any provision of law to the contrary, the Commission may approve a
108 performance-based ratemaking methodology for any public utility engaged in the business of furnishing
109 gas service (for the purposes of this section a "gas utility") *or electricity service (for the purposes of this*
110 *section an "electric utility")*, either upon application of the gas utility *or electric utility* or upon its own
111 motion, and after such notice and opportunity for hearing as the Commission may prescribe. For the
112 purposes of this section, "performance-based ratemaking methodology" shall mean a method of
113 establishing rates and charges that are in the public interest, and that departs in whole or in part from
114 the cost-of-service methodology set forth in § 56-235.2.

115 B. The Commission shall approve such performance-based ratemaking methodology if it finds that it:
116 (i) preserves adequate service to all classes of customers; (including transportation-only customers *if for*
117 *a gas utility*); (ii) does not unreasonably prejudice or disadvantage any class of gas utility *or electric*
118 *utility* customers; (iii) provides incentives for improved performance by the gas utility *or electric utility*
119 in the conduct of its public duties; (iv) results in rates that are not excessive; and (v) is in the public
120 interest. Performance-based forms of regulation may include, but not be limited to, fixed or capped base
121 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 gas 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) 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) other customer benefits that are reasonably estimated to accrue from the gas or electric utility's proposal.

C. 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) gas 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.

D. 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.

§ 56-238. 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 a period not exceeding 45 days from the date of filing a complete application, during which time it shall investigate the reasonableness or justice of the 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. Notice of the suspension of any proposed rate, toll, charge, rule or regulation shall be given by the Commission to the public utility, prior to the expiration of the thirty 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.

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

A. 4. Each electric utility that purchases fuel for the generation of electricity or purchases power and that was not, as of July 1, 1999, bound by a rate ease settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall submit to the Commission its estimate of fuel costs, including the cost of purchased power, for the 12-month period beginning on the date prescribed by the Commission. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each company to place in effect tariff provisions designed to recover the fuel

costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or under-recovery of fuel costs previously incurred.

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

B. All fuel costs recovery tariff provisions in effect on January 1, 2004, for any electric utility that purchases fuel for the generation of electricity and that was, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall remain in effect until the earlier of (i) July 1, 2007; ~~(ii) the termination of capped rates pursuant to the provisions of subsection C of § 56-582; or (iii) ii) the establishment of tariff provisions under subsection~~ C. Any such utility shall continue to report to the Commission annually its actual fuel costs, including the cost of purchased power ~~until July 1, 2007. For periods after January 1, 2008, the Commission shall place in effect tariff provisions designed to recover the fuel costs as provided in subsection A.~~

C. ~~Until the capped rates for such utility expire or are terminated pursuant to the provisions of § 56-582, each~~ Each electric utility described in subsection B shall submit annually to the Commission its estimate of fuel costs, including the cost of purchased power, for the ~~successive 12-month periods beginning on July 1, 2007, 2008, and 2009, and the six-month period beginning July 1, 2010~~ 2007. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each such utility to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for such periods, adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for any period prior to July 1, 2007, and (ii) the Commission may order that up to 40% of any increase in fuel tariffs determined by the Commission to be appropriate for the ~~12-month~~ 6-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be deferred and recovered during the period from July 1, 2008, through December 31, 2010.

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

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

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

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

§ 56-576. Definitions.

As used in this chapter:

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

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585; (v) engaging in activities of a retail electric energy supplier, licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) engaging in actions of a retail customer, in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.

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

"Commission" means the State Corporation Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Transmission system" means those facilities and equipment that are required to provide for the transmission of electric energy.

§ 56-580. Electrical generating facilities.

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

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the

306 reliability, quality and maintenance by transmitters and distributors of their transmission and retail
307 distribution systems.

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

312 D. The Commission shall permit the construction and operation of electrical generating facilities
313 upon a finding that such generating facility and associated facilities (i) will have no material adverse
314 effect upon reliability of electric service provided by any regulated public utility and (ii) are not
315 otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate
316 a generating facility described in this subsection, the Commission shall give consideration to the effect
317 of the facility and associated facilities on the environment and establish such conditions as may be
318 desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1. In order to
319 avoid duplication of governmental activities, any valid permit or approval required for an electric
320 generating plant and associated facilities issued or granted by a federal, state or local governmental
321 entity charged by law with responsibility for issuing permits or approvals regulating environmental
322 impact and mitigation of adverse environmental impact or for other specific public interest issues such
323 as building codes, transportation plans, and public safety, whether such permit or approval is prior to or
324 after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect
325 to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were
326 considered by, the governmental entity in issuing such permit or approval, and the Commission shall
327 impose no additional conditions with respect to such matters. Nothing in this section shall affect the
328 ability of the Commission to keep the record of a case open. Nothing in this section shall affect any
329 right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed
330 facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the
331 one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a
332 decision approving such proposed facility that is conditioned upon issuance of any environmental permit
333 or approval.

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

340 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or
341 operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt
342 from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any
343 such electric utility unless (i) that municipality or that authority created by a governmental unit exempt
344 from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii)
345 that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail
346 customer outside the geographic area that was served by such municipality as of July 1, 1999, except (a)
347 any area within the municipality that was served by an incumbent public utility as of that date but was
348 thereafter served by an electric utility owned or operated by a municipality or by an authority created by
349 a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the terms of a
350 franchise agreement between the municipality and the incumbent public utility, or (b) where the
351 geographic area served by an electric utility owned or operated by a municipality is changed pursuant to
352 mutual agreement between the municipality and the affected incumbent public utility in accordance with
353 § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1, 1999, or by an
354 authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 is
355 made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in
356 such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any
357 such utility, mutatis mutandis.

358 G. The applicability of this chapter to any investor-owned incumbent electric utility supplying
359 electric service to retail customers on January 1, 2003, whose service territory assigned to it by the
360 Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be
361 suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any
362 other service territory in any jurisdiction to customers who have the right to receive retail electric energy
363 from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates
364 established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and
365 (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs
366 pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

367 H.B. The expiration date of any certificates granted by the Commission pursuant to subsection DA,

for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an additional two years from the expiration date that otherwise would apply.

§ 56-585. Generation facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

454 G. To ensure a reliable and adequate supply of electricity, and to promote economic development, an
455 investor-owned distributor that has been designated a default service provider under this section may
456 petition the Commission for approval to construct, or cause to be constructed, a coal-fired generation
457 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as
458 described in § 15.2-6002, to meet its native load and default service obligations, regardless of whether
459 such facility is located within or without the distributor's service territory. The Commission shall
460 consider any petition filed under this subsection in accordance with its competitive bidding rules
461 promulgated pursuant to § 56-234.3, and in accordance with the provisions of this chapter.
462 Notwithstanding the provisions of subdivision C 3 related to the price of default service, a distributor
463 that constructs, or causes to be constructed, such facility shall have the right to recover the costs of the
464 facility, including allowance for funds used during construction, *or for construction work in progress*,
465 life-cycle costs, and costs of infrastructure associated therewith, plus a fair rate of return, *through its*
466 *rates for default service*. A distributor filing a petition for the construction of a facility under the
467 provisions of this subsection *section* shall file with its application a plan, *or a revision to a plan*
468 *previously filed*, as described in subdivision C 3, that proposes default service rates to ensure such cost
469 recovery and fair rate of return. The construction of such facility that utilizes energy resources located
470 within the Commonwealth is in the public interest, and in determining whether to approve such facility,
471 the Commission shall liberally construe the provisions of this title.

472 § 56-594. Net energy metering provisions.

473 A. The Commission shall establish by regulation a program, to begin no later than July 1, 2000,
474 which affords eligible customer-generators the opportunity to participate in net energy metering. The
475 regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners and/or
476 operators of distribution or transmission facilities; (iii) providers of ~~default electric~~ service; (iv) eligible
477 customer-generators; or (v) any combination of the foregoing, as the Commission determines will
478 facilitate the provision of net energy metering, provided that the Commission determines that such
479 requirements do not adversely affect the public interest.

480 B. For the purpose of this section:

481 "Eligible customer-generator" means a customer that owns and operates, or contracts with other
482 persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than
483 10 kilowatts for residential customers and 500 kilowatts for nonresidential customers; (ii) uses as its
484 total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises
485 and is connected to the customer's wiring on the customer's side of its interconnection with the
486 distributor; (iv) is interconnected and operated in parallel with an electric company's *utility's* transmission
487 and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own
488 electricity requirements.

489 "Net energy metering" means measuring the difference, over the net metering period, between (i)
490 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 the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions, and 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. Beyond the requirements set forth in this section, an eligible customer-generator whose electrical generating system meets those standards and rules shall bear the reasonable cost, if any, as determined by the Commission, to (i) install additional controls, (ii) perform or pay for additional tests, or (iii) 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 customer-generator against discrimination by virtue of its status as a customer-generator. Where electricity generated by the customer-generator over the net metering period exceeds the electricity consumed by the customer-generator, the customer-generator shall not be compensated for the excess electricity unless the entity contracting to receive such electric energy and the customer-generator enter into a power purchase agreement for such excess electricity. The net metering standard contract or tariff shall be available to eligible 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 in the state reaches 0.1 percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year.

2. That §§ 56-577, 56-578, 56-579, 56-581 through 56-584, 56-586, 56-587 through 56-593, and 56-596 of the Code of Virginia are repealed.

3. That nothing in this act shall be deemed to modify or impair the terms, unless otherwise modified by an order of the State Corporation Commission, of any order of the State Corporation Commission approving the divestiture of generation assets that was entered pursuant to repealed § 56-590.

4. That the State Corporation Commission shall adopt such rules, regulations, orders or procedures as may be necessary to carry out the provisions of this act.

5. That the provisions of this act shall become effective on January 1, 2008.