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SENATE BILL NO. 1191

Offered January 10, 2007

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A BILL to amend and reenact §§ 56-249.6, 56-577, 56-582, 56-583, and 56-585 of the Code of Virginia, relating to capped rates and default service under the Virginia Electric Utility Restructuring Act.

Patrons—Reynolds and Puckett

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-249.6, 56-577, 56-582, 56-583, and 56-585 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

C. Until the capped rates for such utility expire or are terminated pursuant to the provisions of § 56-582, each 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~~ *and each* July 1~~,~~ ~~2010~~ *thereafter through and including July 1, 2012*. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each such utility to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for such periods, adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for any period prior to July 1, 2007, and (ii) the Commission may order that up to 40% of any increase in fuel tariffs determined by the Commission to be appropriate for the 12-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be deferred and recovered during the period from July 1, 2008, ~~through~~ ~~December~~ ~~31,~~ ~~2010~~ *until July 1, 2013, or such shorter period as the Commission determines is in the public interest.*

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.

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.

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

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

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

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

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

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

3. On and after January 1, 2002, the 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. The Commission may conduct pilot programs encompassing retail customer choice of electricity energy suppliers for each incumbent electric utility that has not transferred functional control of its transmission facilities to a regional transmission entity prior to January 1, 2003. Upon application of an incumbent electric utility, the Commission may establish opt-in and opt-out municipal aggregation pilots and any other pilot programs the Commission deems to be in the public interest, and the Commission shall report to the Commission on Electric Utility Restructuring on the status of such pilots by November of each year through 2006.

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

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

2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such utility or default providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to,

costs of transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for hearing and after review of any plan filed by such utility to procure electric energy to serve such customers. The methodology established by the Commission for determining such costs shall be consistent with the goals of (a) promoting the development of effective competition and economic development within the Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

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

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

§ 56-582. Rate caps.

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

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

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

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

B. The Commission may adjust ~~such~~ *the* capped rates *established pursuant to subdivision A 3* in connection with the following: ~~(i) utilities'~~

1. The capped rates of any incumbent investor-owned electric utility that was, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, may be adjusted: (i) to permit recovery of fuel and purchased power costs pursuant to § 56-249.6; (ii) to address any changes in the taxation by the Commonwealth of incumbent electric utility revenues; and (iii) to address any financial distress of the utility beyond its control.

2. The capped rates of any incumbent investor-owned electric utility that was not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and that has not transferred its generation assets pursuant to § 56-590 prior to January 1, 2002, may be adjusted: (i) to permit recovery of fuel and purchased power costs pursuant to § 56-249.6~~, and, if applicable, in accordance with the terms of any Commission order approving the divestiture of generation assets pursuant to § 56-590,~~*;* (ii) *to address* any changes in the taxation by the Commonwealth of incumbent electric utility revenues~~,~~*;* (iii) *to address* any financial

distress of the utility beyond its control~~,~~*;* (iv) *to permit the recovery, prior to July 1, 2007, in proceedings which shall be initiated not more than once in any 12-month period, of its incremental costs for transmission or distribution system reliability and compliance with state or federal environmental laws or regulations to the extent such costs were prudently incurred on and after July 1, 2004; (v) pursuant to a proceeding, initiated during the period January 1, 2004, through June 30, 2007, for approval of a one-time change in its rates, which proceeding shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title; and (vi) pursuant to proceedings, which may be initiated by the utility not more than once in any 12-month period commencing July 1, 2007, and each July 1 thereafter through and including July 1, 2012, for approval of a change in its rates, which proceeding shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title.*

3. The capped rates of any incumbent investor-owned electric utility that was not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and that has transferred its generation assets pursuant to § 56-590 prior to January 1, 2002, may be adjusted: (i) if such utility transferred all of its generation assets to an affiliate, on and after July 1, 2007, to permit recovery of fuel and purchased power costs pursuant to § 56-249.6, provided such an adjustment shall be in accordance with the terms of the Commission order approving the divestiture of its generation assets pursuant to § 56-590; (ii) pursuant to a proceeding, initiated at any time after July 1, 2007, for approval of a one-time change in its rates, which proceeding shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title, provided such an adjustment shall be in accordance with the terms the Commission order approving such divestiture; (iii) to address any changes in the taxation by the Commonwealth of incumbent electric utility revenues; and (iv) to address any financial distress of the utility beyond its control.

4. The capped rates of any ~~with respect to cooperatives that were~~ *cooperative may be adjusted: (i) if it was* not ~~members~~ *a member* of a power supply cooperative on January 1, 1999, and as long as ~~they do~~ *it does* not become ~~members~~ *a member*, ~~their~~ *to permit recovery of its* cost of purchased wholesale power and discounts from capped rates to match the cost of providing distribution services~~, (v) with respect to cooperatives that were members~~ *; (ii) if it was a member* of a power supply cooperative on January 1, 1999, ~~their~~ *to permit* recovery of fuel costs, through the wholesale power cost adjustment clauses of ~~their~~ *its* tariffs pursuant to § 56-231.33~~, and (vi) with respect to incumbent electric utilities that were not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, the Commission shall adjust such utilities' capped rates,~~*; (iii) to address any changes in the taxation by the Commonwealth of incumbent electric utility revenues; (iv) to address any financial distress of the utility beyond its control; (v) to permit the recovery, prior to July 1, 2007, in proceedings which shall be initiated* not more than once in any 12-month period, ~~for the timely recovery of their~~ *of its* incremental costs for transmission or distribution system reliability and compliance with state or federal environmental laws or regulations to the extent such costs ~~are~~ *were* prudently incurred on and after July 1, 2004~~.~~*; (vi) pursuant to a proceeding, initiated during the period January 1, 2004, through June 30, 2007, for approval of a one-time change in its rates, which proceeding shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title; and (vii) pursuant to proceedings, which may be initiated by the utility not more than once in any 12-month period commencing July 1, 2007, and each July 1 thereafter through and including July 1, 2012, for approval of a change in its rates, which proceeding shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title.* ~~Any adjustments pursuant to § 56-249.6 and clause (i) of this subsection by an incumbent electric utility that transferred all of its generation assets to an affiliate with the approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be effective only on and after July 1, 2007.~~

5. In addition to any adjustments authorized pursuant to subdivisions 1 through 4 of this subsection, the capped rates of any investor-owned distributor that has been designated a default service provider under § 56-585 and that constructs, or causes to be constructed, a coal-fired generation facility as described in subsection G of § 56-585, may be adjusted pursuant to proceedings, which may be initiated by the distributor not more than once in any 12-month period commencing July 1, 2007, and each July 1 thereafter through and including July 1, 2012, for approval of a change in its rates, which proceeding shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title, in which proceeding the Commission shall consider, along with its costs, revenues, and other factors required to be considered in such proceedings, the utility's share of the costs incurred in developing such facility, including allowance for its share of funds used during construction, life-cycle costs, and costs of infrastructure associated therewith, plus a fair rate of return.

Notwithstanding the provisions of § 56-249.6, *when considering any request for an adjustment to capped rates to permit recovery of fuel and purchased power costs pursuant to § 56-249.6,* the Commission may authorize tariffs that include incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined by the Commission to be fair and reasonable to the

utility and its customers.

C. A utility may petition the Commission to terminate the capped rates to all customers any time after ~~January 1, 2004~~ *July 1, 2007,* and such capped rates may be terminated upon the Commission finding of an effectively competitive market for generation services within the service territory of that utility. ~~If its capped rates, as established and adjusted from time to time pursuant to subsections A and B, are continued after January 1, 2004, an incumbent electric utility that is not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002, may petition the Commission, during the period January 1, 2004, through June 30, 2007, for approval of a one-time change in its rates, and if the capped rates are continued after July 1, 2007, such incumbent electric utility may at any time after July 1, 2007, petition the Commission for approval of a one-time change in its rates. Any change in rates pursuant to this subsection by an incumbent electric utility that divested its generation assets with approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be in accordance with the terms of any Commission order approving such divestiture. Any petition for changes to capped rates filed pursuant to this subsection shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title.~~

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

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

F. The capped rates established pursuant to this section shall expire *at midnight* on ~~December 31, 2010~~ *June 30, 2013*, unless sooner terminated by the Commission pursuant to the provisions of subsection C.

§ 56-583. Wires charges.

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

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

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

D. A supplier of retail electric energy may pay any or all of the wires charge owed by any customer to an incumbent electric utility. The supplier may not only pay such wires charge on behalf of any customer, but also contract with any customer to finance such payments. Further, on request of a supplier, the incumbent electric utility shall enter into a contract allowing such supplier to pay such

wires charge on an accelerated or deferred basis. Such contract shall contain terms and conditions, specified in rules and regulations promulgated by the Commission to implement the provisions of this subsection, that fully compensate the incumbent electric utility for such wires charge, including reasonable compensation for the time value of money.

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

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

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

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

§ 56-585. Default service.

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of default service and (ii) establish one or more programs making such services available to retail customers requiring them commencing with 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 *components of* default service *in one or more regions of the Commonwealth, to one or more classes of customers. For the duration of the capped rate period established under § 56-582, the Commission shall designate the distributor to be the provider of default service in its certificated service territory. Except as provided in subsection F, for periods following the capped rate period, the Commission shall designate the distributor or another willing person to be the provider of default services in such service territory, at rates determined pursuant to subsection C and for periods specified by the Commission; however, the Commission shall not require a distributor, or affiliate thereof, to provide any such services outside the territory in which such distributor providers service.* In ~~doing so~~ *proceedings to designate an entity as a default service provider after the capped rate period*, the Commission:

1. Shall take into account the characteristics and qualifications of *the distributor and other* prospective providers, including *their* proposed rates, *terms, and conditions of default services;* experience~~,~~*; record of* safety~~,~~ *and* reliability~~,~~*;* corporate structure~~,~~*; ownership of or* 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~~; *and*

3. ~~To the extent that default service is not provided pursuant to a designation under subdivision 2, may~~ *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,~~ *provide one or more components of default service,* 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. *Shall determine that the entity will provide such default service in a safe and reliable manner, and that the public interest will be served by designating the entity as the provider of default service.*

Notwithstanding ~~imposition on~~ *the designation of* a distributor *or its affiliate* by the Commission ~~of the requirement provided in subdivision 3~~ *as the provider of default service in its certificated service territory,* the Commission may thereafter, *after notice and an opportunity for a hearing and* 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,~~ *Rates for default services shall be determined by the Commission,* 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.

2. After the expiration or termination of ~~such~~ capped rates, the rates for default services *provided by a distributor in its certificated service territory* shall be *determined by the Commission* based upon ~~competitive market prices for electric generation services~~ *the distributor's prudently incurred costs. Any proceeding to establish or revise the rates for default service provided by a distributor shall be conducted by the*

~~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~~ *in a proceeding pursuant to 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.~~ *After the expiration or termination of capped rates, the rates for default services provided by a provider that is not the distributor in the certificated service territory shall be determined by the Commission based upon (i) the provider's proposed rates for default services as set forth in subdivision B 1, (ii) the results of competitive bidding processes conducted by the Commission pursuant to subdivision B 2, or (iii) the provider's prudently incurred costs determined in a proceeding pursuant to the provisions of Chapter 10 (§ 56-232 et seq.) of this title, as the Commission finds shall best serve the public interest.*

4. *Notwithstanding any provision of this section to the contrary:*

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.~~ *A distribution electric cooperative's rates for default services shall be established as provided in subsection F; and*

b. ~~If, in establishing a distributor's default service generation rates, the Commission is unable to identify regional electricity markets where competition is an effective regulator of rates, then the Commission shall establish such distributor's default service generation rates by setting rates that would approximate those likely to be produced in a competitive regional electricity market. Such proxy generation rates shall take into account: (i) the factors set forth in subdivision C 4 a, and (ii) such additional factors as the Commission deems necessary to produce such proxy generation rates.~~ *If an order of the Commission approving the divestiture of the generation assets of a distributor pursuant to § 56-590 establishes a procedure for determining the rates for default service provided by the distributor, then the distributor's default service rates shall be determined by the Commission in accordance with the terms of such order.*

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

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

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

G. To ensure a reliable and adequate supply of electricity, and to promote economic development, an investor-owned distributor that has been designated a default service provider under this section may petition the Commission for approval to construct, or cause to be constructed, a coal-fired generation facility that ~~utilizes~~ *is to be fueled in whole or in part by* Virginia coal and is *to be* located in the coalfield region of the Commonwealth, as described in § 15.2-6002, to meet its native load and default service obligations, regardless of whether such facility is located within or without the distributor's service territory. The Commission shall consider any petition filed under this subsection in accordance with its competitive bidding rules promulgated pursuant to § 56-234.3, and in accordance with the provisions of this ~~chapter~~ *title*. ~~Notwithstanding the provisions of subdivision C 3 related to the price of default service, a~~ *Such a* distributor that constructs, or causes to be constructed, such facility shall have the right to recover *its share of* the costs of the facility, including allowance for *its share of* funds used during construction, life-cycle costs, and costs of infrastructure associated therewith, plus a fair rate of return, through its *capped rates, upon approval of an increase therein in a rate case as provided in subdivision B 5 of § 56-582 or its* rates for default service *as provided in subdivision C 2*. A distributor filing a petition for the construction of a facility under the provisions of this subsection shall file with its application ~~a plan, or a revision to a plan previously filed, as described in subdivision C 3, that proposes~~ *proposed adjustments to its capped rates or* default service rates to ensure such cost recovery and fair rate of return. The construction of such facility that utilizes energy resources located within the Commonwealth is in the public interest~~,~~ and, in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title.