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HOUSE BILL NO. 2117

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact §§ 10.1-1186.2:1, 10.1-1197.8, 10.1-1307.02, 15.2-1901, 15.2-2316.2, 30-201, 30-202, 30-205, 56-1, 56-231.24, 56-234.2, 56-235.1:1, 56-235.2, 56-235.6, 56-235.8, 56-238, 56-245.1:2, 56-249.6, 56-265.2, 56-598, 58.1-400.3, 58.1-2900, 58.1-3221.4, 58.1-3506, 58.1-3814, 62.1-44.15:21, 67-101, and 67-1100 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 56-240.1, 56-247.2, 56-250.1, and 56-250.2; and to repeal Chapter 23 (§§ 56-576 through 56-596) of Title 56 of the Code of Virginia, relating to the regulation of electric utilities.

Patrons—Armstrong, Abbott and Johnson; Senators: Puckett and Reynolds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1186.2:1, 10.1-1197.8, 10.1-1307.02, 15.2-1901, 15.2-2316.2, 30-201, 30-202, 30-205, 56-1, 56-231.24, 56-234.2, 56-235.1:1, 56-235.2, 56-235.6, 56-235.8, 56-238, 56-245.1:2, 56-249.6, 56-265.2, 56-598, 58.1-400.3, 58.1-2900, 58.1-3221.4, 58.1-3506, 58.1-3814, 62.1-44.15:21, 67-101, and 67-1100 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 56-240.1, 56-247.2, 56-250.1, and 56-250.2 as follows:

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

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

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

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

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

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

B. If the owner or operator of a small renewable energy project to whom the Department has authorized a permit by rule pursuant to this article is a utility regulated pursuant to Title 56, such small

renewable energy project shall be exempt from any provision of § 56-46.1 and any corresponding provision of ~~subsection D of § 56-580 or~~ Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 that requires environmental review and permitting by the State Corporation Commission. ~~An operator of a small renewable energy project that is a utility regulated pursuant to Title 56 shall nonetheless be required to obtain a certificate of public convenience and necessity pursuant to subsection D of § 56-580.~~

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

A. As used in this section:

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

"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.

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

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

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

§ 15.2-1901. Condemnation authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 30-201. Commission on Electric Utility Restructuring continued as Commission on Electric Utility Regulation; purpose.

The Commission on Electric Utility Restructuring established pursuant to Chapter 885 of the Acts of

Assembly of 2003, is continued, effective July 1, 2008, as the Commission on Electric Utility Regulation (the Commission) within the legislative branch of state government. The purpose of the Commission is to monitor the State Corporation Commission's implementation of ~~the Virginia Electric Utility Regulation Act (§ 56-576 et seq.)~~ *laws pertaining to the regulation of electric utilities*.

§ 30-202. Membership; terms.

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

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

The Commission shall elect a chairman and vice-chairman from among its membership. The chairman of the Commission shall be authorized to designate one or more members of the Commission to observe and participate in the discussions of any work group convened by the State Corporation Commission ~~in furtherance of its duties under the Virginia Electric Utility Regulation Act (§ 56-576 et seq.) and this chapter~~. Members participating in such discussions shall be entitled to compensation and reimbursement provided in § 30-204, if approved by the Joint Rules Committee or its Budget Oversight Subcommittee.

§ 30-205. Powers and duties of the Commission.

The Commission shall have the following powers and duties:

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

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

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

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

§ 56-1. Definitions.

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

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

"Commission" means the State Corporation Commission.

"Corporation" or "company" includes all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

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

"Local exchange telephone service" means telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at rates and charges specified in local exchange tariffs filed with the Commission. "Local exchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet

protocol service.

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

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

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

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

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

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

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

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

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

"Virginia limited liability company" means (i) any limited liability company organized under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, (ii) any entity that has become a limited liability company pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of Title 13.1 or pursuant to conversion or domestication under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, or (iii) any foreign limited liability company that is organized or is domesticated by filing articles of organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include (a) the name of the foreign limited liability company immediately prior to the filing of the articles of organization; (b) the date on which and the jurisdiction in which the foreign limited liability company was first formed, organized, created or otherwise came into being; and (c) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the foreign limited liability company, or any equivalent thereto under applicable law, immediately prior to the filing of the articles of organization. With respect to an organization or domestication pursuant to clause (iii), the terms and conditions of a domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the foreign limited liability company in the conduct of its business or by applicable law other than the law of the Commonwealth, as appropriate, and the provisions governing the status, powers, obligations, and choice of law applicable under § 13.1-1010.3 shall apply to any limited liability company so domesticated or organized.

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

§ 56-231.24. 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~~.

§ 56-234.2. Review of rates.

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

§ 56-235.1:1. Rates for stand-by electric service at renewable cogeneration facilities.

A. The Commission shall adopt regulations pursuant to its rules of practice and procedure that require an electric utility to provide a rate for stand-by service to customers that operate a cogeneration facility in the Commonwealth that generates renewable energy, as defined in § ~~56-576~~ *56-1*. Such regulations shall allow the electric utility to recover all of the costs that are identified by the electric utility and determined by the Commission to be related to the provision of the stand-by service, including but not limited to the costs of transformers and other equipment required to provide stand-by service and the costs of capacity and generation, including but not limited to fuel costs.

B. Within 90 days following the effective date of the regulations adopted pursuant to subsection A, each public utility providing electric service in the Commonwealth shall submit a plan setting forth how the utility will comply with the regulations if it does not already have stand-by provisions approved by the Commission that comply with the regulations. The Commission shall, after notice and the opportunity for hearing, determine whether a utility's plan complies with the regulations.

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

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

~~For ratemaking purposes, the Commission shall determine the federal and state income tax costs for investor-owned water, gas, or electric utility that is part of a publicly-traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.~~

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

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

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

A. Notwithstanding any provision of law to the contrary, the Commission may approve a performance-based ratemaking methodology for any public utility engaged in the business of furnishing gas service (for the purposes of this section a "gas utility") or electricity service (for the purposes of this section an "electric utility"), upon application of the gas utility or electric utility, and after such notice and opportunity for hearing as the Commission may prescribe. For the purposes of this section,

"performance-based ratemaking methodology" shall mean a method of establishing rates and charges that are in the public interest, and that departs in whole or in part from the cost-of-service methodology set forth in § 56-235.2.

B. The Commission shall approve such performance-based ratemaking methodology if it finds that it: (i) preserves adequate service to all classes of customers (including transportation-only customers if for a gas utility); (ii) does not unreasonably prejudice or disadvantage any class of gas utility or electric utility customers; (iii) provides incentives for improved performance by the gas utility or electric utility in the conduct of its public duties; (iv) results in rates that are not excessive; and (v) is in the public interest. Performance-based forms of regulation may include, but not be limited to, fixed or capped base rates, the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing for gas utilities, and innovative utilization of utility-related assets and activities (such as a gas utility's off-system sales of excess gas supplies and release of upstream pipeline capacity, performance of billing services for other gas or electricity suppliers, and reduction or elimination of regulatory requirements) in ways that benefit both the utility and its customers and may include a mechanism for automatic annual adjustments to revenues or prices to reflect changes in any index adopted for the implementation of such performance-based form of regulation. In making the findings required by this subsection, the Commission shall include, but not be limited to, in its considerations: (i) 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) service to one or more classes of customers has deteriorated, or will deteriorate, to the point that the public interest will not be served by continuation of the performance-based form of regulation; (ii) any class of gas utility customer or electric utility customer is being unreasonably prejudiced or disadvantaged by the performance-based form of regulation; (iii) the performance-based form of regulation does not, or will not, provide reasonable incentives for improved performance by a gas utility or electric utility in the conduct of its public duties (which determination may include, but not be limited to, consideration of whether rates are inadequate to recover a gas utility's or electric utility's cost of service); (iv) the performance-based form of regulation is resulting in rates that are excessive compared to a gas utility's or electric utility's cost of service and any benefits that accrue from the performance-based plan; (v) the terms ordered by the Commission in connection with approval of a gas utility's or electric utility's implementation of a performance-based form of regulation have been violated; or (vi) the performance-based form of regulation is no longer in the public interest. Any request by a gas utility or electric utility to discontinue its implementation of a performance-based form of regulation may include application pursuant to this chapter for approval of new rates under the standards of § 56-235.2 ~~for a gas utility or pursuant to § 56-585.1 for an investor-owned incumbent electric utility~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Result in rates charged by the gas utility that are not just and reasonable rates within the contemplation of § 56-235.2 or that are in excess of levels approved by the Commission under § 56-235.6, as the case may be;

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

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

5. Not be in the public interest.

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

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

D. Once a plan becomes effective pursuant to this section, if the Commission determines, after notice and opportunity for hearing, that the plan is causing, or is reasonably likely to cause, the effects set

forth in subsection B, it may order revisions to the plan to remove such effects. Any such revisions to the plan will operate prospectively only.

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

F. Licensure of gas suppliers.

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

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

a. The Commission's rules and regulations shall not govern the rates charged by licensed gas suppliers, except that the Commission's rules and regulations may govern the terms and conditions of service of licensed gas suppliers to protect the gas utility's customers from commercially unreasonable terms and conditions; and

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

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

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

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

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

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

4. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded,

such person or governmental agency initiating an action pursuant to this section may be awarded reasonable attorney's fees and court costs.

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

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

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

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

I. Consumer education.

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

a. Opportunities and options in choosing natural gas suppliers;

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

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

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

2. The consumer education program authorized herein may be conducted in conjunction with the program *that had been* provided for ~~in~~ *under former* § 56-592.

3. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against gas utilities, public service companies, licensed suppliers and other providers of any services affected by this section. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of § 56-235.8 and to enjoin or punish any violations thereof pursuant to its authority under § 56-235.8, this title, or Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

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

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

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

§ 56-238. 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 of any public utility except an investor-owned electric public utility for a period not exceeding 150 days from the date of filing, and the Commission shall suspend the enforcement of all of the proposed rates, tolls, charges, rules or regulations of an investor-owned electric public utility until the Commission's final order in the proceeding, during which times the Commission shall investigate the reasonableness or justice of 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. The Commission's final order in such a proceeding involving an investor-owned electric public utility that is filed after January 1, 2010, shall be entered not more than nine months after the date of filing~~, at which time~~. *For good cause, the nine-month period may be extended by Commission order for a period not to exceed an additional 90 days. Upon entry of the Commission's final order* the suspension period shall expire, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order. Notice of the suspension of any proposed rate, toll, charge, rule or regulation shall be given by the Commission to the public utility, prior to the expiration of the 30 days' notice to the Commission and the public heretofore provided for. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the public utility making the filing, the proposed rates, tolls, charges, rules or regulations shall go into effect. Where increased rates, tolls or charges are thus made effective, the Commission shall, by order, require the public utility to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, and upon completion of the hearing and decision, to order such public utility to refund, with interest at a rate set by the Commission, the portion of such increased rates, tolls or charges by its decision found not justified. The Commission shall prescribe all necessary rules and regulations to effectuate the purposes of this section on or before September 1, 1980. This section shall not apply to proceedings conducted pursuant to § 56-245 or 56-249.6.

§ 56-240.1. Rates of electric cooperatives.

A. The rates, terms and conditions of distribution electric cooperatives subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 of this title shall be regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and this chapter, as modified by the following provisions:

1. Except for energy related cost (fuel cost), the Commission shall not require any cooperative to adjust, modify, or revise its rates, by means of riders or otherwise, to reflect changes in wholesale power cost which occurred during the capped rate period, other than in a general rate proceeding;

2. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, increase or decrease all classes of its rates for distribution services at any time, provided, however, that such adjustments will not effect a cumulative net increase or decrease in excess of five percent in such rates in any three-year period. Such adjustments will not affect or be limited by any existing fuel or wholesale power cost adjustment provisions. The cooperative will promptly file any such revised rates with the Commission for informational purposes;

3. Each cooperative may, without Commission approval, upon an affirmative resolution of its board of directors, make any adjustment to its terms and conditions that does not affect the cooperative's revenues from the distribution or supply of electric energy. In addition, a cooperative may make such adjustments to any pass-through of third-party service charges and fees, and to any fees, charges and deposits set out in Schedule F of such cooperative's Terms and Conditions filed as of January 1, 2007. The cooperative will promptly file any such amended terms and conditions with the Commission for informational purposes;

4. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, make any adjustment to its rates reasonably calculated to collect any or all of the fixed costs of owning and operating its electric distribution system, including without limitation, such costs as are identified as customer-related costs in a cost of service study, through a new or modified fixed monthly charge, rather than through volumetric charges associated with the use of electric energy; however, such adjustments shall be revenue neutral based on the cooperative's determination of the proper intra-class allocation of the revenues produced by its then current rates. The cooperative may elect, but is not required, to implement such adjustments through incremental changes over the course of up to three years. The cooperative shall file promptly revised tariffs reflecting any such adjustments with the Commission for informational purposes; and

5. A cooperative may, at any time after the expiration or termination of capped rates, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of:

a. Projected and actual costs for the utility to design and operate fair and effective peak-shaving programs. The Commission shall approve such a petition if it finds that the program is in the public interest; provided that the Commission shall allow the recovery of such costs as it finds are reasonable; and

b. Projected and actual costs of projects that the Commission finds to be necessary to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations. The Commission shall approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations.

B. None of the adjustments described in subdivisions A 2 through A 5 will apply to the rates paid by any customer that takes service by means of dedicated distribution facilities and had noncoincident peak demand in excess of 90 megawatts in calendar year 2006.

C. Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust any terms and conditions of service or agreements regarding pole attachments or the use of the cooperative's poles or conduits.

§ 56-245.1:2. Customers to be notified of renewable power options.

Beginning January 1, 2009, at least once each calendar quarter, each investor-owned electric utility in the Commonwealth shall include in or on the customer bills a notice directing them to a toll-free telephone number or Internet website that will provide information on the options to purchase electric energy provided from renewable energy sources from the utility ~~or from any supplier of electric energy licensed to sell retail electric energy within the applicable service territory, pursuant to subdivision A 5 of § 56-577~~. The notice shall include instructions for purchasing electric energy from renewable sources from the utility or other licensed supplier of electric energy. The option shall be exercisable, at the customer's option, either via the company's Internet website or toll-free telephone number. Each investor-owned electric utility shall also feature available options for purchasing electric energy from renewable sources prominently on its Internet site.

§ 56-247.2. Consumer education program; funding.

A. The Commission shall establish and implement an electric energy consumer education program that is designed to enable consumers to make rational and informed choices about:

1. Energy conservation, energy efficiency, demand-side management, demand response, and renewable energy;

2. Demand-side management and demand response programs offered in the Commonwealth to retail customers; and

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

B. In establishing the consumer education program, the Commission shall take into account the findings and recommendations of the subgroup on Information/Consumer Education that was established in conjunction with the Commission's proceeding in Case PUE-2007-00049, that implemented the third enactment of Chapters 888 and 933 of the Acts of Assembly of 2007.

C. The Commission shall consult regularly with representatives of consumer organizations, community-based groups, state agencies, electric utilities, and other interested parties throughout the consumer education program's implementation and operation.

D. The Commission shall report to the Commission on Electric Utility Regulation, as frequently as may be requested by such Commission, concerning:

1. The scope of the consumer education program;

2. Materials and media required to effectuate the program;

3. State agency and nongovernmental entity participation;

4. Program duration;

5. Funding requirements and mechanisms for any such program; and

6. Such related matters as may be appropriate.

E. The Commission shall fund the establishment and operation of the consumer education program through the special regulatory revenue tax currently authorized by § 58.1-2660 and the special regulatory tax authorized by Chapter 29 (§ 58.1-2900 et seq.) of Title 58.1.

§ 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~~ *the* 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.

~~3.~~ Beginning July 1, 2009, for all utilities ~~described in subdivision A 1 and subsection B~~ *that purchase fuel for the generation of electricity or purchase power*, if the Commission approves any increase in fuel factor charges pursuant to this section that would increase the total rates of the residential class of customers of any such utility by more than 20 percent, the Commission, within six months following the effective date of such increase, shall review fuel costs, and if the Commission finds that the utility is, or is likely to be, in an over-recovery position with respect to fuel costs for the 12-month period for which the increase in fuel factor charges was approved by more than five percent, it may reduce the utility's 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 later of (i) July 1, 2007 or (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.~~

~~C. 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 successive 12-month periods beginning on July 1, 2007, and each July 1 thereafter. 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 shall order that the deferral portion, if any, of the total increase in fuel tariffs for all classes as 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 without interest and recovered from all classes of customers as follows: (i) in the 12-month period beginning July 1, 2008, that part of the deferral portion of the increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by four percent over the level of such total rates in existence on June 30, 2008, shall be recovered; (ii) in the 12-month period beginning July 1, 2009, that part of the balance of the deferral portion of the increase in fuel tariffs, if any, that the Commission determines would increase the total rates of the residential class of customers of the utility by four percent over the level of such total rates in existence on June 30, 2009, shall be recovered; and (iii) in the 12-month period beginning July 1, 2010, the entire balance of the deferral portion of the increase in fuel tariffs, if any, shall be recovered. The "deferral portion of the increase in fuel tariffs" means the portion of such increase in fuel tariffs that exceeds the amount of such increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by more than four percent over the level of such total rates in existence on June 30, 2007.~~

~~D. In proceedings under subsections A and C:~~

~~1.~~ Energy revenues associated with off-system sales of power shall be credited against fuel factor expenses in an amount equal to the total incremental fuel factor costs incurred in the production and delivery of such sales.

~~In addition, 75 percent of the total annual margins from off-system sales shall be credited against fuel factor expenses; however, the Commission, upon application and after notice and opportunity for hearing, may require that a smaller percentage of such margins be so credited if it finds by clear and convincing evidence that such requirement is in the public interest. The remaining margins from off-system sales shall not be considered in the biennial reviews of electric utilities conducted pursuant to § 56-585.1. In the event such margins result in a net loss to the electric utility, (i) no charges shall be applied to fuel factor expenses and (ii) any such net losses shall not be considered in the biennial reviews of electric utilities conducted pursuant to § 56-585.1.~~ For purposes of this subsection, "margins from off-system sales" shall mean the total revenues received from off-system sales transactions less the total incremental costs incurred~~; and~~. *The Commission may, to the extent deemed appropriate, offset against fuel costs and purchased power costs to be recovered hereunder the margins from off-system sales.*

~~2.~~ 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.

~~E.~~ 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.

§ 56-250.1. Net energy metering program.

A. The Commission shall establish by regulation a program that affords eligible customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners and/or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; or (v) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest.

B. For the purpose of this section:

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

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator.

"Net metering period" means the 12-month period following the date of final interconnection of the eligible customer-generator's system with an electric service provider, and each 12-month period thereafter.

C. The Commission's regulations shall ensure that the metering equipment installed for net energy 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 energy metering arrangements. Such requirements shall protect the customer-generator against discrimination by virtue of its status as a customer-generator, and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as eligible customer-generators. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators served on demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

E. If electricity generated by an eligible customer-generator over the net metering period exceeds the electricity consumed by the customer-generator, the customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the customer-generator, the supplier that serves the eligible customer-generator shall enter into a power purchase agreement with the requesting eligible customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the supplier to purchase such excess electricity at the rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator owns the renewable energy certificates associated with its electrical generating facility, however, at the time that the eligible customer-generator enters into a power purchase agreement with its supplier, the customer-generator shall have a one-time option to sell the renewable energy certificates associated with such electrical

generating facility to its supplier and be compensated at an amount that is established by the Commission to reflect the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-generator and the supplier from voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at mutually agreed upon prices if the eligible customer-generator does not exercise its option to sell its renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible customer-generator enters into a power purchase agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators shall be recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's power purchase arrangements. The net energy 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 one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year, and shall require the supplier to pay the eligible customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

§ 56-250.2. Interconnection by farms.

A. As used in this section, "eligible farm" means an entity that owns or operates facilities within the Commonwealth for the generation of electric energy, which entity is described in subdivision (b)(10) of § 56-265.1.

B. Eligible farms shall be permitted to connect to the electrical grid in order to feed into the grid electricity generated by the eligible farm from its facilities that generate electricity from a waste-to-energy technology.

C. The Commission shall adopt regulations to implement this section.

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

A. It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business, without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege. Any certificate required by this section shall be issued by the Commission only after opportunity for a hearing and after due notice to interested parties. The certificate for overhead electrical transmission lines of 150 kilovolts or more shall be issued by the Commission only after compliance with the provisions of § 56-46.1.

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

C. A map showing the location of any proposed ordinary extension or improvement outside of the territory in which the public utility is lawfully authorized to operate shall be filed with the Commission, and prior notice of such ordinary extension shall be given to the public utility or other entity authorized to provide the same utility service within said territory. Ordinary extensions outside the service territory of a public utility shall be undertaken only for use in providing its public utility service and shall be constructed and operated so as not to interfere with the service or facilities of any public utility or other entity authorized to provide utility service within any other territory. If, upon objection of the affected utility or entity filed within thirty days of the aforesaid notice and after investigation and opportunity for a hearing the Commission finds an ordinary extension would not comply with this section, it may alter or amend the plan for such activity or prohibit its construction.

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

related facilities incidental or necessary to the operation of the pipeline.

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

F. An electric utility owning, operating, operating, controlling, or having an entitlement to transmission capacity may join, or withdraw from, a regional transmission entity upon obtaining the prior approval of the Commission, which approval shall be granted, following notice and hearing, upon a finding that it is in the public interest.

G. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

H. The Commission shall consider developing expedited permitting processes for small electric generation facilities of 50 megawatts or less. The Commission shall also consider developing a standardized permitting process and interconnection arrangements for those power systems less than 500 kilowatts which have demonstrated approval from a nationally recognized testing laboratory acceptable to the Commission.

§ 56-598. Contents of integrated resource plans.

An IRP should:

1. Integrate, over the planning period, the electric utility's forecast of demand for electric generation supply with recommended plans to meet that forecasted demand and assure adequate and sufficient reliability of service, including, but not limited to:

a. Generating electricity from generation facilities that it currently operates or intends to construct or purchase;

b. Purchasing electricity from affiliates and third parties; and

c. Reducing load growth and peak demand growth through cost-effective demand reduction programs;

2. Identify a portfolio of electric generation supply resources, including purchased and self-generated electric power, that:

a. ~~Consistent with § 56-585.1, is~~ *Is* most likely to provide the electric generation supply needed to meet the forecasted demand, net of any reductions from demand side programs, so that the utility will continue to provide reliable service at reasonable prices over the long term; and

b. Will consider low cost energy/capacity available from short-term or spot market transactions, consistent with a reasonable assessment of risk with respect to both price and generation supply availability over the term of the plan;

3. Reflect a diversity of electric generation supply and cost-effective demand reduction contracts and services so as to reduce the risks associated with an over-reliance on any particular fuel or type of generation demand and supply resources and be consistent with the Commonwealth's energy policies as set forth in § 67-102; and

4. Include such additional information as the Commission requests pertaining to how the electric utility intends to meets its obligation to provide electric generation service for use by its retail customers over the planning period.

§ 58.1-400.3. Minimum tax on certain electric suppliers.

A. 1. An electric supplier, except for those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax imposed by this section, instead of the corporate income tax imposed by § 58.1-400 if applicable, net of any income tax credits that may be used to offset such tax, if the tax imposed by § 58.1-400 is less than the minimum tax imposed by this subsection. An electric supplier that is organized as a limited liability, partnership, corporation that has made an election under subchapter S of the Internal Revenue Code, or other entity treated as a pass-through entity shall be subject to the minimum tax in the manner prescribed by regulation.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts for the calendar year that ends during the taxable year minus the state's portion of the electric utility consumption tax billed to consumers.

B. 1. An electric supplier that is organized as a cooperative and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax, instead of the tax on modified net income imposed by § 58.1-400.2, if the tax imposed by § 58.1-400.2, net of any credits that may be used to offset such tax, is less than the minimum tax imposed by this subsection.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts from sales to nonmembers for the calendar year that ends during the taxable year minus the consumption tax collected from nonmembers.

C. In the case of an income tax return for a period of less than 12 months, the minimum tax shall be based on the gross receipts for the calendar year that ends during the taxable period or, if none, the most recent calendar year that ended before the taxable period. The minimum tax shall be prorated by the number of months in the taxable period.

D. The State Corporation Commission shall calculate and certify to the Department for each tax year as defined in § 58.1-2600 the name, address, and minimum tax for each electric supplier. The Commission shall mail or otherwise deliver a copy of the certification to each affected electric supplier.

E. When an electric supplier subject to the tax imposed by this section is one of several affiliated corporations that file a consolidated or combined income tax return, the portion of the affiliated corporations' tax liability that is attributable to the electric supplier shall be computed as follows:

1. Each corporation included in the consolidated or combined return shall recompute its corporate income tax liability, net of any income tax credits, as if it were filing a separate return. The separate income tax liability of the electric supplier shall then be compared to the affiliated corporations' tax liability, net of any income tax credits, indicated on the consolidated or combined return. For purposes of this section, the lesser amount shall be deemed to be the corporate income tax imposed by § 58.1-400 and attributable to the electric supplier.

2. a. If such corporate income tax amount is less than the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall be subject to the minimum tax in lieu of the corporate income tax imposed by § 58.1-400.

b. If such corporate income tax amount exceeds the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall not owe the minimum tax.

F. The requirements imposed under Article 20 (§ 58.1-500 et seq.) of Chapter 3 of this title regarding the filing of a declaration of estimated income taxes and the payment of such estimated taxes, shall be applicable to electric suppliers regardless of whether such taxpayer expects to be subject to the minimum tax imposed herein or to the corporate income tax imposed by § 58.1-400.

For purposes of determining the applicability of the exceptions under which the addition to the tax for the underpayment of any installment of estimated taxes shall not be imposed, it shall be irrelevant whether the tax shown on the return for the preceding taxable year is the corporate income tax or the minimum tax.

G. To the extent that a taxpayer is subject to the minimum tax imposed under this section, there shall be allowed a credit against the separate, combined, or consolidated corporate income tax for the total amount of minimum tax paid by the electric supplier in all previous years that is in excess of the tax imposed by § 58.1-400 on the electric supplier for such years.

H. 1. To the extent an electric supplier or its parent company has remitted estimated income tax payments in excess of its corporate income tax liability for the taxable years beginning on or after January 1, 2001, but before January 1, 2004, such overpayments shall only be utilized to offset any corporate income tax liabilities incurred pursuant to § 58.1-400 for taxable years beginning on and after January 1, 2004, and shall not be claimed as a refund of overpaid taxes, except as provided in subdivision 2 of this subsection. For the purposes of this subsection, estimated income tax payments shall include any overpayments from a prior taxable year carried forward as an estimated payment to be credited towards a future tax liability.

2. If an electric supplier has had a corporate income tax liability of greater than $0 for each taxable year beginning on or after January 1, 2001, but before January 1, 2003, then such electric supplier may claim a refund of any estimated income tax payments in excess of their taxable year 2003 corporate income tax liability.

I. Every electric supplier which owes the minimum tax imposed by this section shall remit such tax payment to the Department of Taxation.

J. ~~Notwithstanding any of the foregoing provisions, an electric supplier may not adjust capped rates pursuant to § 56-582 of the Code of Virginia on any portion of the minimum tax due to the Commonwealth.~~

~~K.~~ The following words and terms, for purposes of this section, shall have the following meanings:

"Consumption tax" means the state's portion of the electric utility consumption tax billed pursuant to Chapter 29 (§ 58.1-2900 et seq.) of this title, for which the electric supplier is defined as the "service provider" pursuant to § 58.1-2901 less any amounts billed on behalf of utilities owned and operated by municipalities.

"Electric supplier" means an incumbent electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the State Corporation Commission.

"Gross receipts" has the same meaning as defined in § 58.1-2600 less receipts from sales to federal, state and local governments for their own use.

"Nonmember" has the same meaning as defined in § 58.1-400.2.

§ 58.1-2900. Imposition of tax.

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 and subject to the adjustments authorized by subdivision A 5 and by § 58.1-2902, a tax on the consumers of electricity in the Commonwealth based on kilowatt hours delivered by the incumbent distribution utility and used per month as follows:

1. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month not in excess of 2,500 kWh at the rate of $0.00155 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00102/kWh	$0.00015/kWh	$0.00038/kWh

2. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 2,500 kWh but not in excess of 50,000 kWh at the rate of $0.00099 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00065/kWh	$0.00010/kWh	$0.00024/kWh

3. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 50,000 kWh at the rate of $0.00075 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00050/kWh	$0.00007/kWh	$0.00018/kWh

4. The tax rates set forth in subdivisions 1, 2, and 3 are in lieu of and replace the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§ 58.1-2660), and the local license tax (§ 58.1-3731) levied on corporations furnishing heat, light or power by means of electricity.

5. The tax on consumers under this section shall not be imposed on consumers served by an electric utility owned or operated by a municipality if such municipal electric utility elects to have an amount equivalent to the tax added on the bill such utility (or an association or agency of which it is a member) pays for bundled or unbundled transmission service as a separate item. Such amount, equivalent to the tax, shall be calculated under the tax rate schedule as if the municipal electric utility were selling and collecting the tax from its consumers, adjusted to exclude the amount which represents the local consumption tax if the locality in which a consumer is located does not impose a license fee rate pursuant to § 58.1-3731, and shall be remitted to the Commission pursuant to § 58.1-2901. Municipal electric utilities may bundle the tax in the rates charged to their retail customers. Notwithstanding anything contained herein to the contrary, the election permitted under this subdivision shall not be exercised by any municipal electric utility if the entity to whom the municipal electric utility (or an association or agency of which it is a member) pays for transmission service is not subject to the taxing jurisdiction of the Commonwealth, unless such entity agrees to remit to the Commonwealth all amounts equivalent to the tax pursuant to § 58.1-2901.

6. The tax on consumers set forth in subdivisions 1, 2, and 3 shall only be imposed in accordance with this subdivision on consumers of electricity purchased from a utility consumer services cooperative to the extent that such cooperative purchases, for the purpose of resale within the Commonwealth, electricity from a federal entity that made payments in accordance with federal law (i) in lieu of taxes during such taxable period to the Commonwealth and (ii) on the basis of such federal entity's gross proceeds resulting from the sale of such electricity. Such tax shall instead be calculated by deducting from each of the respective tax amounts calculated in accordance with subdivisions 1, 2, and 3 an amount equal to the calculated tax amount multiplied by the ratio of the total cost of power supplied by the federal entity, including facilities rental, during the taxable period to the utility consumer services cooperative's total operating revenue within the Commonwealth during the taxable period. The State Corporation Commission may audit the records and books of any utility consumer services cooperative that determines the tax on consumers in accordance with this subdivision to verify that the tax imposed has been correctly determined and properly remitted.

B. The tax authorized by this chapter shall not apply to municipalities' own use or to use by divisions or agencies of federal, state and local governments.

C. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible customer-generators, as defined in § ~~56-594~~ *56-250.1*, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by

such customer-generators.

§ 58.1-3221.4. Classification of improvements to real property designed and used primarily for the manufacture of a renewable energy product for tax purposes.

Improvements to real property designed and used primarily for the purpose of manufacturing a product from renewable energy, as defined in § ~~56-576~~ *56-1*, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real property. The governing body of any county, city, or town may, by ordinance, levy a tax on the value of such improvements at a different rate from that of tax levied on other real property. The rate of tax imposed by any county, city, or town on such improvements shall not exceed that applicable to the general class of real property.

§ 58.1-3506. Other classifications of tangible personal property for taxation.

A. The items of property set forth below are each declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of tangible personal property provided in this chapter:

1. a. Boats or watercraft weighing five tons or more, not used solely for business purposes;

b. Boats or watercraft weighing less than five tons, not used solely for business purposes;

2. Aircraft having a maximum passenger seating capacity of no more than 50 that are owned and operated by scheduled air carriers operating under certificates of public convenience and necessity issued by the State Corporation Commission or the Civil Aeronautics Board;

3. Aircraft having a registered empty gross weight equal to or greater than 20,000 pounds that are not owned or operated by scheduled air carriers recognized under federal law, but not including any aircraft described in subdivision 4;

4. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and otherwise used for educational purposes (including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such flights necessary for testing, maintaining, or preparing such aircraft for safe operation), shall constitute a new class of property. Such class of property shall not include any aircraft used for commercial purposes, including transportation and other services for a fee;

5. All other aircraft not included in subdivisions A 2, A 3, or A 4 and flight simulators;

6. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation purposes as provided in subsection C of § 46.2-730;

7. Tangible personal property used in a research and development business;

8. Heavy construction machinery not used for business purposes, including but not limited to land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural activity equipment and ditch and other types of diggers;

9. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any other alternative energy source for use in manufacturing and any cogeneration equipment purchased to achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment shall include, without limitation, such equipment purchased by firms engaged in the business of generating electricity or steam, or both;

10. Vehicles without motive power, used or designed to be used as manufactured homes as defined in § 36-85.3;

11. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses;

12. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes only;

13. Privately owned vans with a seating capacity of not less than seven nor more than 15 persons, including the driver, used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

14. Motor vehicles specially equipped to provide transportation for physically handicapped individuals;

15. Motor vehicles (i) owned by members of a volunteer rescue squad or volunteer fire department or (ii) leased by members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is owned by each volunteer rescue squad member or volunteer fire department member, or leased by each volunteer rescue squad member or volunteer fire department member if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, may be specially classified under this section, provided the volunteer rescue squad member or volunteer fire department member regularly responds to emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department

who regularly responds to calls or regularly performs other duties for the rescue squad or fire department, and the motor vehicle owned or leased by the volunteer rescue squad member or volunteer fire department member is identified. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline. In any county that prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may be certified and classified pursuant to this subsection when the vehicle certified as of the immediately prior January date is transferred during the tax year;

16. Motor vehicles (i) owned by auxiliary members of a volunteer rescue squad or volunteer fire department or (ii) leased by auxiliary members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by each auxiliary volunteer fire department or rescue squad member may be specially classified under this section. The auxiliary member shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is an auxiliary member of the volunteer rescue squad or fire department who regularly performs duties for the rescue squad or fire department, and the motor vehicle is identified as regularly used for such purpose; however, if a volunteer rescue squad or fire department member and an auxiliary member are members of the same household, that household shall be allowed no more than two special classifications under this subdivision or subdivision 15 of this section. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

17. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound persons or provide transportation to senior or handicapped citizens in the community to carry out the purposes of the nonprofit organization;

18. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers as defined in § 46.2-1900, which are used for recreational purposes only, and privately owned trailers as defined in § 46.2-100 which are designed and used for the transportation of horses except those trailers described in subdivision A 11 of § 58.1-3505;

19. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of, one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written statement to the commissioner of revenue or other assessing officer from the Department of Veterans Services that the veteran has been so designated or classified by the Department of Veterans Services as to meet the requirements of this section, and that his disability is service-connected. For purposes of this section, a person is blind if he meets the provisions of § 46.2-739;

20. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially classified under this section. In order to qualify for such classification, any auxiliary police officer who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary police officer or from the official who has appointed such auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

21. Until the first to occur of June 30, 2019, or the date that a special improvements tax is no longer levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District created pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used in manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement District, provided that such business personal property is put into service within the District on or after July 1, 1999;

22. Motor vehicles which use clean special fuels as defined in § 46.2-749.3, which shall not include

any vehicle described in subdivision 38 or 40;

23. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility that is properly licensed by the federal government, the Commonwealth, or both, and that is properly zoned for such use. "Wild animals" means any animals that are found in the wild, or in a wild state, within the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals that are found in the wild, or in a wild state, and are native to a foreign country;

24. Furniture, office, and maintenance equipment, exclusive of motor vehicles, that are owned and used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and that is used by that organization for the purpose of maintaining or using the open or common space within a residential development;

25. Motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce;

26. All tangible personal property employed in a trade or business other than that described in subdivisions A 1 through A 18, except for subdivision A 17, of § 58.1-3503;

27. Programmable computer equipment and peripherals employed in a trade or business;

28. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational purposes only;

29. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for recreational purposes only;

30. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes only;

31. Tangible personal property used in the provision of Internet services. For purposes of this subdivision, "Internet service" means a service, including an Internet Web-hosting service, that enables users to access content, information, electronic mail, and the Internet as part of a package of services sold to customers;

32. Motor vehicles (i) owned by persons who serve as auxiliary, reserve, or special deputy sheriffs or (ii) leased by persons who serve as auxiliary, reserve, or special deputy sheriffs if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. For purposes of this subdivision, the term "auxiliary deputy sheriff" means auxiliary, reserve, or special deputy sheriff. One motor vehicle that is regularly used by each auxiliary deputy sheriff to respond to auxiliary deputy sheriff duties may be specially classified under this section. In order to qualify for such classification, any auxiliary deputy sheriff who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary deputy sheriff or from the official who has appointed such auxiliary deputy sheriff. That certification shall state that the applicant is an auxiliary deputy sheriff who regularly uses a motor vehicle to respond to such auxiliary duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

33. Forest harvesting and silvicultural activity equipment;

34. Equipment used primarily for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as defined in § 32.1-162.21 or for products or purposes related to human embryo stem cells. For purposes of this section, biotechnology equipment means equipment directly used in activities associated with the science of living things;

35. Boats or watercraft weighing less than five tons, used for business purposes only;

36. Boats or watercraft weighing five tons or more, used for business purposes only;

37. Tangible personal property which is owned and operated by a service provider who is not a CMRS provider and is not licensed by the FCC used to provide, for a fee, wireless broadband Internet service. For purposes of this subdivision, "wireless broadband Internet service" means a service that enables customers to access, through a wireless connection at an upload or download bit rate of more than one megabyte per second, Internet service, as defined in § 58.1-602, as part of a package of services sold to customers;

38. Low-speed vehicles as defined in § 46.2-100;

39. Motor vehicles with a seating capacity of not less than 30 persons, including the driver;

40. Motor vehicles powered solely by electricity; and

41. Tangible personal property designed and used primarily for the purpose of manufacturing a product from renewable energy as defined in § ~~56-576~~ *56-1*.

B. The governing body of any county, city or town may levy a tax on the property enumerated in subsection A at different rates from the tax levied on other tangible personal property. The rates of tax and the rates of assessment shall (i) for purposes of subdivisions 1, 2, 3, 4, 5, 6, 8, 11 through 20, 22 through 24, and 26 through 41 of subsection A, not exceed that applicable to the general class of tangible personal property, (ii) for purposes of subdivisions A 7, A 9, A 21, and A 25, not exceed that applicable to machinery and tools, and (iii) for purposes of subdivision A 10, equal that applicable to real property.

C. Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is defined in § 58.1-3523, (i) included in any separate class of property in subsection A and (ii) assessed for tangible personal property taxes by a county, city, or town receiving a payment from the Commonwealth under Chapter 35.1 of this title for providing tangible personal property tax relief, the county, city, or town may levy the tangible personal property tax on such qualifying vehicle at a rate not to exceed the rates of tax and rates of assessment required under such chapter.

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

A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.) of this title, which tax shall not be imposed at a rate in excess of 20 percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of $15 per month for residential customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more. For taxable years beginning on and after January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be imposed pursuant to subsections C through J of this section only.

B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure already in existence, shall not be effective until 60 days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

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

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

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

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

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

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

The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not exceed the limits set forth in this subsection. The provider of billing services shall bill the tax to all users who are subject to the tax and to whom it bills for electricity service, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain annual

revenues being received by localities from such tax at the time of the conversion. The current service provider shall provide to localities no later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to $3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to kilowatt hours. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received from each class of nonresidential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of kilowatt hours used, and the amount of consumer utility tax paid in calendar year 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt hour rates for nonresidential consumers shall not apply after January 1, 2004. On or before October 31, 2000, any locality imposing a tax on consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J of this section. Notice of such amendment shall be provided to service providers in a manner consistent with subsection B of this section except that "registered agent of the provider of billing services" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

2. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible customer-generators, as defined in § ~~56-594~~ *56-250.1*, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

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

H. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers, taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. Current pipeline distribution companies and gas utilities shall provide to localities not later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to $3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received and due from each of the nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on nonresidential customers up to the amount authorized by subsection A.

On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J of this section. Notice of such amendment shall be provided to pipeline distribution companies and gas utilities in a manner consistent with subsection B except that "registered

agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

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

J. For purposes of this section:

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

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

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

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

K. Nothing in this section shall prohibit a locality from enacting an ordinance or other local law to allow such locality to impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities, beginning at such time as natural gas service is first made available in such locality. The maximum amount of tax imposed on residential consumers based on CCF delivered monthly to consumers shall not exceed $3 per month. The maximum tax rate imposed by such locality on nonresidential consumers based on CCF delivered monthly to consumers shall not exceed an average of the tax rates on nonresidential consumers of natural gas in effect (at the time natural gas service is first made available in such locality) in localities whose residents are being provided natural gas from the same pipeline distribution company or gas utility or both that is also providing natural gas to the residents of such locality. Beginning January 1, 2004, the tax rates for residential and nonresidential consumers of natural gas in such locality shall be determined in accordance with the provisions of subsection H.

§ 62.1-44.15:21. Impacts to wetlands.

A. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

B. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions and may be met through wetland creation or restoration, purchase or use of mitigation bank credits pursuant to § 62.1-44.15:23, or contribution to a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions. When utilized in conjunction with creation, restoration, or mitigation bank credits, compensation may incorporate (i) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (ii) preservation of wetlands.

C. The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands. The Board shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this article for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland.

D. The Board shall develop general permits for such activities in wetlands as it deems appropriate. General permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. The Board is authorized to waive the requirement for a general permit or deem an activity in compliance with a general permit when it

determines that an isolated wetland is of minimal ecological value. The Board shall develop general permits for:

1. Activities causing wetland impacts of less than one-half of an acre;

2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission. No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, *and* 56-265.2:1~~, and 56-580~~ to ensure that consultation on wetland impacts occurs prior to siting determinations;

3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and sand mining;

4. Virginia Department of Transportation or other linear transportation projects; and

5. Activities governed by nationwide or regional permits approved by the Board and issued by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board any copies of preconstruction notification, postconstruction report, and certificate of compliance required by the U.S. Army Corps of Engineers.

E. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing.

F. Within 15 days of receipt of a general permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. A determination that an application is complete shall not mean the Board will issue the permit but means only that the applicant has submitted sufficient information to process the application. The Board shall deny, approve, or approve with conditions any application for coverage under a general permit within 45 days of receipt of a complete preconstruction application. The application shall be deemed approved if the Board fails to act within 45 days.

G. No Virginia Water Protection Permit shall be required for impacts to wetlands caused by activities governed under Chapter 13 (§ 28.2-100 et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This section shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities that are incidental to an occupant's ongoing residential use of property and of minimal ecological impact. The Board shall develop criteria governing this exemption and shall specifically identify the activities meeting these criteria in its regulations.

H. No Virginia Water Protection Permit shall be required for impacts caused by the construction or maintenance of farm or stock ponds, but other permits may be required pursuant to state and federal law. For purposes of this exclusion, farm or stock ponds shall include all ponds and impoundments that do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§ 10.1-604 et seq.) of Chapter 6 pursuant to normal agricultural or silvicultural activities.

§ 67-101. Energy objectives.

The Commonwealth recognizes each of the following objectives pertaining to energy issues will advance the health, welfare, and safety of the residents of the Commonwealth:

1. Ensuring the availability of reliable energy at costs that are reasonable and in quantities that will support the Commonwealth's economy;

2. Managing the rate of consumption of existing energy resources in relation to economic growth;

3. Establishing sufficient supply and delivery infrastructure to maintain reliable energy availability in the event of a disruption occurring to a portion of the Commonwealth's energy matrix;

4. Using energy resources more efficiently;

5. Facilitating conservation;

6. Optimizing intrastate and interstate use of energy supply and delivery to maximize energy availability, reliability, and price opportunities to the benefit of all user classes and the Commonwealth's economy as stated in subdivision 2 of § 67-100;

7. Increasing Virginia's reliance on sources of energy that, compared to traditional energy resources, are less polluting of the Commonwealth's air and waters;

8. Researching the efficacy, cost, and benefits of reducing, avoiding, or sequestering the emissions of greenhouse gases produced in connection with the generation of energy;

9. Removing impediments to the use of abundant low-cost energy resources located within and outside the Commonwealth and ensuring the economic viability of the producers, especially those in the Commonwealth, of such resources;

10. Developing energy resources and facilities in a manner that does not impose a disproportionate adverse impact on economically disadvantaged or minority communities;

11. Recognizing the need to foster those economically developable alternative sources of energy that can be provided at market prices as vital components of a diversified portfolio of energy resources; and

12. Increasing Virginia's reliance on and production of sustainably produced biofuels made from traditional agricultural crops and other feedstocks, such as winter cover crops, warm season grasses, fast-growing trees, algae or other suitable feedstocks grown in the Commonwealth that will create jobs and income, produce clean-burning fuels that will help to improve air quality, and provide the new markets for Virginia's silvicultural and agricultural products needed to preserve farm employment, conserve farmland and forestland, and increase implementation of silvicultural and agricultural best management practices to protect water quality.

~~Nothing in this section shall be deemed to abrogate or modify in any way the provisions of the Virginia Electric Utility Regulation Act (§ 56-576 et seq.).~~

§ 67-1100. Definitions.

As used in this chapter, unless the context requires otherwise:

"Commission" means the State Corporation Commission.

"Distribution facilities" includes poles and wires, or cables, or pipelines or other underground conduits by which a renewable generator is able to (i) supply electricity generated at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy facility to customers, or (iii) supply landfill gas it collects to customers or a natural gas distribution or transmission pipeline.

"Locality" has the meaning ascribed thereto in § 15.2-102.

"Public highway" means, for purposes of computing the public rights-of-way use fee, the centerline mileage of highways and streets that are part of the State Highway System as defined in § 33.1-25, the secondary system of state highways as defined in § 33.1-67, the highways of those cities and certain towns defined in § 33.1-41.1, and the highways and streets maintained and operated by counties that have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that have not elected to return.

"Public rights-of-way use fee" means the fee chargeable to a renewable generator for the occupation and use of public streets, roads, highways, works, turnpikes, streets, avenues, and alleys in the Commonwealth by a locality or the Commonwealth Transportation Board for a renewable generator for its distribution facilities.

"Renewable energy facility" means (i) an electrical generation facility that produces not more than 2 megawatts peak net power output to the distribution grid, which electricity is generated only from a renewable energy source; (ii) a steam reduction facility with a rated capacity of not more than 5,000 mmBtus per hour that produces steam only from a renewable energy source; or (iii) a solid waste management facility permitted by the Department of Environmental Quality from which landfill gas is transmitted or distributed off premises.

"Renewable energy source" means energy derived from any source specified in the definition of renewable energy in § ~~56-576~~ *56-1*.

"Renewable generator" means a person that (i) does not have the power of a public service corporation to acquire rights-of-way, easements, or other interests in lands as provided in § 56-49 and (ii) operates a renewable energy facility.

"Restrictions or requirements concerning the use of the public rights-of-way" includes permitting processes; requirements regarding notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections. Such phrase shall not include any existing franchise fee or public rights-of-way use fee.

2. That any rate adjustment clauses approved by the State Corporation Commission, prior to the effective date of this act, in a proceeding instituted pursuant to subdivisions A 5 or A 6 of § 56-585.1 of the Code of Virginia as they existed prior to the effective date of this act, shall continue in effect on the terms and conditions set forth in the of the order approving them, subject to the following: (i) revenue collected by an investor-owned electric utility pursuant to a rate adjustment clause shall be considered by the State Corporation Commission in determining the utility's total revenue and rate of return on equity in any ratemaking proceeding under Title 56 of the Code of Virginia; (ii) the utility shall continue to be authorized to collect any enhanced rate of return on equity above the approved general rate of return on equity or margin on operating expenses that was approved by the State Corporation Commission in any such proceeding, which authorization shall not prevent the Commission from adjusting the utility's general rate of return on equity in any subsequent rate proceeding pursuant to Title 56; (iii) the duration of any enhanced rate of return on common equity for a generation facility that was approved by the State Corporation Commission pursuant to former subdivision A 6 of § 56-585.1

shall not be shortened by subsequent order of the Commission; and (iv) any such rate adjustment clause shall continue to be accounted for separately for its approved duration.

3. That Chapter 23 (§§ 56-576 through 56-596) of Title 56 of the Code of Virginia is repealed.