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HOUSE BILL NO. 206

Offered January 8, 2020

Prefiled December 27, 2019

A *BILL to amend and reenact §§ 2.2-2279, 10.1-1186.2:1, 10.1-1197.6, 10.1-1197.8, 10.1-1307.02, 10.1-1402.03, 13.1-620, 15.2-1901, 15.2-2232, 15.2-2288.7, 15.2-2316.2, 15.2-5401, 15.2-5402, 15.2-5406, 15.2-5406.1, 15.2-5407, 15.2-5408, 15.2-5410, 15.2-5415, 15.2-5418, 15.2-5423, 15.2-5425, 15.2-5431, 30-201, 30-202, 30-205, 30-209, 33.2-272, 45.1-399, 56-1, 56-1.2, 56-16.1, 56-41.1, 56-46.1, 56-49, 56-88, 56-231.15, 56-231.16, 56-231.23, 56-231.24, 56-231.32, 56-231.34, 56-231.34:1, 56-231.36, 56-231.38, 56-231.39, 56-231.43, 56-231.47, 56-231.50, 56-231.50:1, 56-231.51, 56-232, 56-234 through 56-234.3, 56-235.1, 56-235.2, 56-235.3, 56-235.4, 56-235.6, 56-235.8, 56-235.12, 56-236.2, 56-238, 56-245.1:1, 56-245.3, 56-247.1, 56-250, 56-254, 56-255, 56-256, 56-261, 56-265.1, 56-265.2, 56-265.3, 56-265.4:1, 56-265.4:2, 56-265.4:5, 56-265.8:1, 56-466.2, 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, 67-1100, 67-1206, and 67-1505 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 15.2-5416.1 and by adding in Title 56 a chapter numbered 29, consisting of sections numbered 56-614 through 56-641; and to repeal §§ 15.2-5409, 15.2-5416, 56-1.2:1, 56-232.2:1, 56-235.1:1, 56-235.7, 56-236.1, 56-245.1:2, 56-249.3, 56-249.4, and 56-249.6, Chapter 23 (§§ 56-576 through 56-596.3) of Title 56, and § 67-202.1 of the Code of Virginia and Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, relating to electric utility regulation; retail energy choice.*

Patron—Ware

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2279, 10.1-1186.2:1, 10.1-1197.6, 10.1-1197.8, 10.1-1307.02, 10.1-1402.03, 13.1-620, 15.2-1901, 15.2-2232, 15.2-2288.7, 15.2-2316.2, 15.2-5401, 15.2-5402, 15.2-5406, 15.2-5406.1, 15.2-5407, 15.2-5408, 15.2-5410, 15.2-5415, 15.2-5418, 15.2-5423, 15.2-5425, 15.2-5431, 30-201, 30-202, 30-205, 30-209, 33.2-272, 45.1-399, 56-1, 56-1.2, 56-16.1, 56-41.1, 56-46.1, 56-49, 56-88, 56-231.15, 56-231.16, 56-231.23, 56-231.24, 56-231.32, 56-231.34, 56-231.34:1, 56-231.36, 56-231.38, 56-231.39, 56-231.43, 56-231.47, 56-231.50, 56-231.50:1, 56-231.51, 56-232, 56-234 through 56-234.3, 56-235.1, 56-235.2, 56-235.3, 56-235.4, 56-235.6, 56-235.8, 56-235.12, 56-236.2, 56-238, 56-245.1:1, 56-245.3, 56-247.1, 56-250, 56-254, 56-255, 56-256, 56-261, 56-265.1, 56-265.2, 56-265.3, 56-265.4:1, 56-265.4:2, 56-245.4:5, 56-265.8:1, 56-466.2, 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, 67-1100, 67-1206, and 67-1505 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-5416.1 and by adding in Title 56 a chapter numbered 29, consisting of sections numbered 56-614 through 56-641, as follows:

§ 2.2-2279. Short title; definitions.

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

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

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

"Cost," as applied to the eligible business, means the cost of construction; the cost of acquisition of all lands, structures, rights-of-way, franchises, easements, and other property rights and interests; the cost of demolishing, removing, rehabilitating, or relocating any buildings or structures on lands acquired, including the cost of acquiring any such lands to which such buildings or structures may be moved, rehabilitated, or relocated; the cost of all labor, materials, machinery and equipment, financing charges, letter of credit or other credit enhancement fees, insurance premiums, interest on all bonds prior to and

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during construction or acquisition and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction or acquisition, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, commissions, guaranty fees, other expenses necessary or incident to determining the feasibility or practicality of constructing, financing, or operating a project of an eligible business; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions, improvements and replacements, and such other expenses as may be necessary or incidental to the construction or acquisition of a project of an eligible business or the financing of such construction, acquisition, or expansion and the placing of a project of an eligible business in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the Authority for studies, surveys, borings, preparation of plans and specifications, or other work or materials in connection with the construction or acquisition of a project of an eligible business may be regarded as a part of the cost of a project of an eligible business and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued therefor.

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

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

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

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

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

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

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

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

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

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

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

the eligibility requirements established by the Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

188 5. A certification signed by a professional engineer licensed in Virginia that the maximum generation
189 capacity of the small renewable energy project by (i) an electrical generation facility that generates
190 electricity only from sunlight or wind as designed does not exceed 150 megawatts; (ii) an electrical
191 generation facility that generates electricity only from falling water, wave motion, tides, or geothermal
192 power as designed does not exceed 100 megawatts; or (iii) an electrical generation facility that generates
193 electricity only from biomass, energy from waste, or municipal solid waste as designed does not exceed
194 20 megawatts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

article or Title 56 if the small renewable energy project was approved pursuant to Title 56.

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

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

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

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

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

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

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

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

A. As used in this section:

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

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

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

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

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

A. For the purposes of this section only:

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

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

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

"CCR unit" means any CCR landfill, CCR surface impoundment, lateral expansion of a CCR unit, or

305 combination of two or more such units that is owned by an electric utility. Notwithstanding the
306 provisions of 40 C.F.R. Part 257, "CCR unit" also includes any CCR below the unit boundary of the
307 CCR landfill or CCR surface impoundment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 13.1-620. Special kinds of business.

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

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

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

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

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

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

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

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

§ 15.2-1901. Condemnation authority.

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

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

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

§ 15.2-2232. Legal status of plan.

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

body shall, hold a public hearing, after notice as required by § 15.2-2204. Following the adoption of the Statewide Transportation Plan by the Commonwealth Transportation Board pursuant to § 33.2-353 and written notification to the affected local governments, each local government through which one or more of the designated corridors of statewide significance traverses, shall, at a minimum, note such corridor or corridors on the transportation plan map included in its comprehensive plan for information purposes at the next regular update of the transportation plan map. Prior to the next regular update of the transportation plan map, the local government shall acknowledge the existence of corridors of statewide significance within its boundaries.

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

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

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

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

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

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

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

§ 15.2-2288.7. Local regulation of solar facilities.

A. An owner of a residential dwelling unit may install a solar facility on the roof of such dwelling to serve the electricity or thermal needs of that dwelling, provided that such installation is (i) in compliance

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

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

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

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

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

created pursuant to the Property Owners' Association Act (§ 55.1-1800 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

674 8. The sending properties, subsequent to severance of development rights, to produce agricultural
675 products or forestal products, as defined in § 15.2-4302, and to include parks, campgrounds and related
676 camping facilities; however, for purposes of this subdivision, "campgrounds" does not include use by
677 travel trailers, motor homes, and similar vehicular type structures;

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

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

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

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

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

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

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

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

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

714 I. For the purposes of ad valorem real property taxation, the value of a transferable development
715 right shall be deemed appurtenant to the sending property until the transferable development right is
716 severed from and recorded as a distinct interest in real property, or the transferable development right is
717 used at a receiving property and becomes appurtenant thereto. Once a transferable development right is
718 severed from the sending property, the assessment of the fee interest in the sending property shall reflect
719 any change in the fair market value that results from the inability of the owner of the fee interest to use
720 such property for such uses terminated by the severance of the transferable development right. Upon
721 severance from the sending property and recordation as a distinct interest in real property, the
722 transferable development right shall be assessed at its fair market value on a separate real estate tax bill
723 sent to the owner of said development right as taxable real estate in accordance with Article 1
724 (§ 58.1-3200 et seq.) of Chapter 32 of Title 58.1. The development right shall be taxed as taxable real
725 estate by the local jurisdiction where the sending property is located, until such time as the development
726 right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by
727 the local jurisdiction where the receiving property is located.

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

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

733 L. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with
734 respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or
735 materially restrict, reduce, or downzone the uses, or the density of uses permitted in the zoning district

applicable to any property to which development rights have been transferred, shall be effective with respect to such property unless there has been mistake, fraud, or a material change in circumstances substantially affecting the public health, safety, or welfare.

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

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

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

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

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

§ 15.2-5401. Intent of General Assembly.

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

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

797 life shall be limited to the geographic area that was served as of January 1, 2006, by the Town of
798 Elkton.

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

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

803 **§ 15.2-5402. Definitions.**

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

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

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

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

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

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

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

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

832 "Governmental unit" means any incorporated city or town in the Commonwealth owning on January
833 1, 1979, a system or facilities for the generation, transmission or distribution of electric power and
834 energy for public and private uses and engaged in the generation or retail distribution of electricity
835 transmission or distribution service; any incorporated city in the Commonwealth which on January 1,
836 1979, has a population of 200,000 or more; or any county or incorporated city or town in the
837 Commonwealth which after January 1, 1979, is authorized to participate in an authority pursuant to an
838 act of the General Assembly.

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

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

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

853 **§ 15.2-5406. Rights, powers and duties of authority.**

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

857 1. To provide electric transmission or distribution service;

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

2. 3. To adopt an official seal and alter the same at pleasure;
3. 4. To maintain an office at such place or places as it may designate;
4. 5. To sue and be sued;
5. 6. To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
6. 7. To study, plan, research, develop, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, lease, own, operate and maintain any project or any interest in any project, within or outside the Commonwealth, including the acquisition of an ownership interest in any project as a tenant in common with any other unit or units whether public or private, and to enter into and perform contracts with respect thereto, and if the authority acquires an ownership interest as a tenant in common in any project within the Commonwealth, the surrender or waiver by any such owner of its right to partition such property for a period not exceeding the period for which the property is used or useful for electric *transmission or distribution* utility purposes shall not be invalid and unenforceable by reason of length of such period or as unduly restricting the alienation of such property;
7. 8. To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property within or outside the Commonwealth, either individually or jointly with any other unit or units whether public or private; ~~to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, transportation, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; and to enter into agreements by private negotiation or otherwise, for such period as the authority shall determine, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water;~~
8. 9. To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;
9. 10. To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
10. 11. To dispose of by private negotiated sale or lease or otherwise an existing project, a project under construction, or other property owned either individually or jointly; ~~and to dispose of by private negotiated sale or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, transportation, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water;~~
11. 12. To borrow money and issue revenue bonds of the authority in the manner hereinafter provided;
12. 13. To accept advice and money from any member governmental unit of the authority;
13. 14. To apply and contract for and to expend assistance from the United States or other public or private sources, whether in form of a grant or loan or otherwise;
14. 15. To ~~fix~~, charge and collect rents, rates, fees and charges for ~~output or capacity of any project and for the use of, or for, the other services, facilities and commodities sold, furnished or supplied through any project service rendered;~~
15. 16. To authorize the acquisition, construction, operation or maintenance of ~~any project projects~~ by any unit or individual ~~on such terms as the authority shall deem proper~~, and, in connection with any project which is owned jointly by the authority and one or more units, to act as agent, or designate one or more of the other units to act as agent, for all the owners of the project for the construction, operation or maintenance of such project;
16. 17. To ~~generate, produce, transmit, deliver, exchange, purchase or sell electric power and energy at wholesale or retail, and to enter into contracts for any or all such purposes related to the provision of electric transmission or distribution service;~~
17. 18. To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy at wholesale or retail with any unit within or outside the Commonwealth ~~that are related to the provision of electric transmission or distribution service;~~
18. To purchase power and energy and related services from any source on behalf of its member governmental units and other customers and to sell the same to its member governmental units and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the authority shall determine;
19. In the event of any annexation by a governmental unit which is not a member governmental unit of the authority of lands, areas, or territory in which the authority's projects exist, to continue to do business and to exercise jurisdiction over its properties and facilities in and upon or over such lands, areas or territory as long as any bonds remain outstanding or unpaid, or any contracts or other

920 obligations remain in force;

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

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

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

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

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

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

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

941 In undertaking a project, an authority shall apply to the appropriate agencies of the Commonwealth,
942 the United States, or any state therein, for such permits, licenses, certificates, or approvals as may be
943 necessary, including, in any event, those referred to in §§ 56-46.1, ~~56-234.3~~, and 56-265.2; former
944 § 62.1-3; and Chapter 7 (§ 62.1-80 et seq.) of Title 62.1 of the Code of Virginia. An authority shall
945 construct, maintain and operate such projects in accordance with such permits, licenses, certificates and
946 approvals. The foregoing sentence shall apply to an authority created by a governmental unit exempt
947 from the referendum requirement of § 15.2-5403 only to the extent that it would have applied to the
948 governmental unit that is the sole member of such authority if the governmental unit had directly
949 undertaken the project.

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

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

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

960 3. Estimated useful life of such project;

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

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

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

970 **§ 15.2-5406.1. Electric transmission and distribution service limited to certain authorities.**

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

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

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

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

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

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

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

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

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

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

The agreement may include, but shall not be limited to, provisions for the construction, operation and maintenance of a project by one of the parties thereto, which shall be designated in or pursuant to such agreement as agent on behalf of itself and the other parties, or by such other means as may be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 15.2-5416.1. Regulation by State Corporation Commission.

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

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

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

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

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

§ 15.2-5425. Eminent domain.

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

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

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

§ 30-201. (Expires July 1, 2020) Commission on Retail Electricity Choice; purpose.

The Commission on Electric Utility Restructuring established pursuant to Chapter 885 of the Acts of Assembly of 2003, ~~is and~~ continued, effective July 1, 2008, as the Commission on Electric Utility Regulation, ~~is continued, effective July 1, 2020, as the Commission on Retail Electricity Choice~~ (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 Retail Electricity Choice Act~~ (§ ~~56-576~~ 56-614 et seq.).

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

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

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

The Commission shall elect a chairman and vice-chairman from among its membership. The

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

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

The Commission shall have the following powers and duties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. All of the work of installing the energy system shall be completed by a licensed contractor that (i)

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

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

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

§ 56-1. Definitions.

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

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

"Commission" means the State Corporation Commission.

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

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

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

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

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

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

"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

1289 service, as opposed to interexchange service, consists of telecommunications between points within an
1290 exchange or between exchanges which are within an area where customers may call at specified rates
1291 and charges. "Local exchange telephone service" shall not include Voice-over-Internet protocol service
1292 for purposes of regulation by the Commission, including the imposition of certification processing fees
1293 and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be
1294 construed to either mandate or prohibit the payment of switched network access rates or other
1295 intercarrier compensation, if any, related to Voice-over-Internet protocol service.

1296 "Mail" includes electronic mail and other forms of electronic communication when the customer has
1297 requested or authorized electronic bill delivery or other electronic communications.

1298 "Municipality" or "municipal corporation" shall include an authority created by a governmental unit
1299 exempt from the referendum requirement of § 15.2-5403.

1300 "Person" includes individuals, partnerships, limited liability companies, and corporations.

1301 "Plug-in electric motor vehicle" means an on-road motor vehicle that draws propulsion using a
1302 traction battery that has at least four kilowatt hours of capacity, uses an external source of electric
1303 energy to charge or recharge the battery, has a gross vehicle weight of not more than 14,000 pounds,
1304 and meets any applicable emissions standards.

1305 "Public service corporation" or "public service company" includes gas, pipeline, electric light, heat,
1306 power transmission utility, electric distribution utility, and water supply companies, sewer companies,
1307 telephone companies, and all persons authorized to transport passengers or property as a common
1308 carrier. "Public service corporation" or "public service company" shall not include (i) a municipal
1309 corporation, other political subdivision or public institution owned or controlled by the Commonwealth
1310 unless the entity is an electric transmission or distribution utility; however, if such an entity has
1311 obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to
1312 be a public service corporation or public service company and subject to the authority of the
1313 Commission with respect only to its provision of the services it is authorized to provide pursuant to
1314 such certificate; or (ii) any company described in subdivision (b)(10) of § 56-265.1.

1315 "Railroad" includes all railroad or railway lines, whether operated by steam, electricity, or other
1316 motive power, except when otherwise specifically designated.

1317 "Railroad company" includes any company, trustee or other person owning, leasing or operating a
1318 railroad.

1319 "Rate" means rate charged for any service rendered or to be rendered.

1320 "Rate," "charge" and "regulation" include joint rates, joint charges and joint regulations, respectively.

1321 "Regulated operating revenue" includes only revenue from services not found to be competitive.

1322 "Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or
1323 otherwise, waste landfill gas, municipal solid waste, wave motion, tides, or geothermal power; and
1324 "Renewable energy" does not include energy derived from coal, oil, natural gas, or nuclear power.
1325 "Renewable energy" also includes the proportion of the thermal or electric energy from a facility that
1326 results from the co-firing of biomass.

1327 "Retail electric provider" means a person that sells electricity to retail customers in the
1328 Commonwealth.

1329 "Transportation company" includes any railroad company, any company transporting express by
1330 railroad, and any ship or boat company.

1331 "Virginia limited liability company" has the same meaning ascribed to "limited liability company" in
1332 § 13.1-1002. A foreign limited liability company, as that term is defined in § 13.1-1002, may become a
1333 Virginia limited liability company, even though also being a limited liability company organized under
1334 laws other than the laws of the Commonwealth, by filing articles of organization that meet the
1335 requirements of §§ 13.1-1003 and 13.1-1011 and include (i) the name of the foreign limited liability
1336 company immediately prior to the filing of the articles of organization; (ii) the date on which and the
1337 jurisdiction in which the foreign limited liability company was first formed, organized, created or
1338 otherwise came into being; and (iii) the jurisdiction that constituted the seat, siege social, or principal
1339 place of business or central administration of the foreign limited liability company, or any equivalent
1340 thereto under applicable law, immediately prior to the filing of the articles of organization. With respect
1341 to a foreign limited liability company that is also organized as a Virginia limited liability company, the
1342 terms and conditions of its organization as a Virginia limited liability company shall be approved in the
1343 manner provided for by the document, instrument, agreement or other writing, as the case may be,
1344 governing the internal affairs of the foreign limited liability company in the conduct of its business or
1345 by applicable law other than the law of the Commonwealth, as appropriate.

1346 "Voice-over-Internet protocol service" or "VoIP service" means any service that: (i) enables real-time,
1347 two-way voice communications that originate or terminate from the user's location using Internet
1348 protocol or any successor protocol and (ii) uses a broadband connection from the user's location. This
1349 definition includes any such service that permits users generally to receive calls that originate on the
1350 public switched telephone network and to terminate calls to the public switched telephone network.

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

The terms public utility, public service corporation, or public service company, as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) of this title, shall not refer to:

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

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

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

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

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

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

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

B. Every such application shall, in addition to the plans and specifications required in § 56-18, set forth (i) the means applicant proposes to employ to protect persons and property on the premises of the railroad; (ii) the extent to which applicant will safeguard the railroad from damage or destruction of persons or property resulting from such crossing including a provision to save the railroad harmless from claims arising as a result of such crossing; (iii) the conditions under which usage of the crossing

will terminate and all interests revert to the railroad; and (iv) the means which applicant proposes to employ to prevent interference with the unlimited use of the property by the railroad including, but without limitation, the communication and transportation system on the property proposed to be crossed. The Commission may, at its discretion, require the applicant to provide a bond or insurance conditioned to save the railroad harmless from claims arising as a result of such crossing. The Commission may, as provided in § 56-19, employ experts to advise it with reference to such application.

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

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

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

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

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

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

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth, including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

B. Subject to the provisions of subsection J G, no electrical transmission line of 138 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least 30 days' advance notice by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, (ii) written notice to the governing body of each such county and municipality, and (iii) (3) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the

commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route including a digital geographic information system (GIS) map provided by the public utility showing the location of the proposed route. The Commission shall make GIS maps provided under this subsection available to the public on the Commission's website. Such notices shall be in addition to the advance notice to the chief administrative officer of the county or municipality required pursuant to § 15.2-2202. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned. To assist the Commission in this determination, as part of the application for Commission approval of the line, the applicant shall summarize its efforts to reasonably minimize adverse impact on the scenic assets, historic districts, and environment of the area concerned. In making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation. If the local comprehensive plan of an affected county or municipality designates corridors or routes for electric transmission lines and the line is proposed to be constructed outside such corridors or routes, in any hearing the county or municipality may provide adequate evidence that the existing planned corridors or routes designated in the plan can adequately serve the needs of the company. Additionally, the Commission shall consider, upon the request of the governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the underground placement of the line and (b) any potential impediments to timely construction of the line.

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

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

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

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

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

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

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

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

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

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

E. *D.* In the event that, at any time after the giving of the notice required in subsection B A, it

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

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

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

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

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

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

§ 56-49. Powers.

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

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

2. To acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in lands, including lands under water and riparian rights, of any person, which are deemed necessary for the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works, and for all its necessary business purposes incidental thereto, for its use in serving the public either directly or indirectly through another public service corporation, including permanent, temporary, continuous, periodical or future use, whenever the corporation cannot agree on the terms of purchase or settlement with any such person because of the incapacity of such person or because of the inability to agree on the compensation to be paid or other

terms of settlement or purchase, or because any such person cannot with reasonable diligence be found or is unknown, or is a nonresident of the Commonwealth, or is unable to convey valid title to such property. Such proceeding shall be conducted in the manner provided by Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and shall be subject to the provisions of § 25.1-102. However, the corporation shall not take by condemnation proceedings a strip of land for a right-of-way within 60 feet of the dwelling house of any person except (i) when the court having jurisdiction of the condemnation proceeding finds, after notice of motion to be granted authority to do so to the owner of such dwelling house, given in the manner provided in §§ 25.1-209, 25.1-210, and 25.1-212, and a hearing thereon, that it would otherwise be impractical, without unreasonable expense, to construct the proposed works of the corporation at another location; (ii) in case of occupancy of the streets or alleys, public or private, of any county, city or town, in pursuance of permission obtained from the board of supervisors of such county or the corporate authorities of such city or town; or (iii) in case of occupancy of the highways of this Commonwealth or of any county, in pursuance of permission from the authorities having jurisdiction over such highways. A public service corporation which has not been (i) allotted territory for public utility service by the State Corporation Commission or (ii) issued a certificate to provide public utility service shall acquire lands or interests therein by eminent domain as provided in this subdivision for lines, facilities, works or purposes only after it has obtained any certificate of public convenience and necessity required for such lines, facilities, works or purposes under Chapter 10.1 (§ 56-265.1 et seq.) of this title.

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

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

§ 56-88. Definitions.

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

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

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

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

"Public utility" means any company which owns or operates facilities within the Commonwealth for the generation, electric transmission or electric distribution of electric energy for sale service; for the production, transmission or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for heat, light or power, but excluding any company described in subdivision (b) (8) or (b) (40) 6 of the definition of public utility in § 56-265.1; or for the furnishing of sewerage facilities or water.

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

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

§ 56-231.15. Definitions.

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

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

1658 "Affiliate" means a separate affiliated or subsidiary corporation or other separate legal entity.
 1659 "Board" means the board of directors of a cooperative formed under or subject to this article.
 1660 ~~"Commission" means the State Corporation Commission of Virginia.~~
 1661 "Cooperative" means a utility consumer services cooperative formed under or subject to this article or
 1662 a distribution cooperative formed under the former Distribution Cooperatives Act (§ 56-209 et seq.).
 1663 "Energy" means and includes any and all forms of energy no matter how or where generated or
 1664 produced.
 1665 "Federal agency" means and includes the United States of America, the President of the United
 1666 States of America, the Tennessee Valley Authority, the Federal Administrator of the Rural Utility
 1667 Service, the Southeastern Power Administration, the Federal Energy Regulatory Commission, the
 1668 Securities and Exchange Commission, the Federal Communications Commission, and any and all other
 1669 authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter
 1670 created.
 1671 ~~"HVACR" means heating, ventilation, air conditioning and refrigeration.~~
 1672 "Improve" means and includes construct, reconstruct, replace, extend, enlarge, alter, better, or repair.
 1673 "Law" means any act or statute, general, special or local, of ~~this~~ *the* Commonwealth.
 1674 "Member" means and includes each natural person signing the articles of incorporation of a
 1675 cooperative and each person admitted to membership therein pursuant to law or its bylaws.
 1676 "Municipality" means any city or incorporated town of the Commonwealth.
 1677 "Obligations" means and includes bonds, interim certificates or receipts, notes, debentures, and all
 1678 other evidences of indebtedness either issued by, or the payment of which is assumed or contractually
 1679 undertaken by, a cooperative.
 1680 "Patronage capital" includes all amounts received by a cooperative from sales of electric power or
 1681 electric distribution services; ~~or both, to a retail electric provider for services~~ to members in excess of
 1682 the cooperative's cost of furnishing electric power or distribution services; ~~or both, to a retail electric~~
 1683 ~~provider for services~~ to members and such other margins as determined by the board of directors.
 1684 "Person" means and includes natural persons, firms, associations, cooperatives, corporations, limited
 1685 liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.
 1686 "Propane or fuel oil equipment" means equipment and related systems to store or use propane or fuel
 1687 oil products.
 1688 "Regulated utility services" means utility services that are subject to regulation as to rates or service
 1689 by the Commission.
 1690 "System" means and includes any plant, works, system, facilities, equipment or properties, or any
 1691 part or parts thereof, together with all appurtenances thereto, used or useful in connection with the
 1692 ~~generation, production, transmission or distribution of energy electric distribution service~~ or in
 1693 connection with other utility services *authorized by this article*.
 1694 "Traditional cooperative activity" means any business, service or activity in which cooperatives in
 1695 Virginia have traditionally engaged and that is incidental to and substantially related to the electric
 1696 utility business conducted by a cooperative on or before July 1, 1999, provided that traditional
 1697 cooperative activity does not include any program to (i) buy or maintain an inventory of HVACR
 1698 equipment or household appliances; (ii) install or service any such equipment or household appliances
 1699 for customers, unless such service is not provided by the cooperative but by a third party individual,
 1700 firm or corporation licensed to perform such service; (iii) sell HVACR equipment or household
 1701 appliances to customers metered and billed on residential rates; (iv) sell HVACR equipment to
 1702 customers other than those metered and billed on residential rates except where such sale is an
 1703 incidental part of providing other energy services or providing other traditional cooperative activities; (v)
 1704 sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or
 1705 buy an inventory of propane or fuel oil equipment for resale; or (vi) serve as a coordinator of
 1706 nonelectric energy services or provide engineering consulting services except when such energy or
 1707 engineering services are an incidental part of a marketing effort to provide other energy or engineering
 1708 services or as a part of providing services that are other traditional cooperative activities.
 1709 "Utility services" means any products, services and equipment related to *energy electric distribution*,
 1710 telecommunications, water and sewerage.
 1711 **§ 56-231.16. Organization; purpose.**
 1712 A. Any number of natural persons not less than five may, by executing, filing and recording articles
 1713 of incorporation as hereinafter set forth, form a cooperative, either with or without capital stock, not
 1714 organized for pecuniary profit, for the ~~principal~~ purpose of making *energy, energy services, electric*
 1715 *distribution, telecommunications, water, sewerage*, and other utility services available at the lowest cost
 1716 consistent with sound economy and prudent management of the business of such cooperative and such
 1717 other purposes as its membership shall approve: (i) provided, however, that within its certificated service
 1718 territory, no such cooperative shall, prior to July 1, 2000, undertake or initiate any new program (a) to
 1719 buy or maintain an inventory of HVACR equipment or household appliances; (b) to install or service

any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service; (e) to sell HVACR equipment or household appliances to customers metered and billed on residential rates; (d) to sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing traditional cooperative activities; (e) to sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale; or (f) to serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such cooperative may engage within its certificated service territory in any of the activities enumerated in clause (i) that (a) have received State Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated public service company or its unregulated affiliate within such cooperative's certificated service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within the certificated service territory of another public service company unless such activities are undertaken by such public service company or its unregulated affiliate within such cooperative's certificated service territory. In addition, such cooperative may establish one or more subsidiaries to engage in any other business activities not prohibited by law; notwithstanding the foregoing, no such subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in under this section. For purposes of determining whether a cooperative is formed not for pecuniary profit, the establishment of one or more affiliates thereof on a for-profit basis shall not disqualify such entity from being formed as a cooperative pursuant to this article.

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

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

§ 56-231.23. General powers granted.

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

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

2. To sue and be sued.

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

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

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

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

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

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

1781 obligations.

1782 9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.

1783 10. To exercise, with respect to its providing regulated utility service, all the powers set forth in
1784 § 56-49, including the power of eminent domain as prescribed for other public service corporations by
1785 general law.

1786 11. To assist its members and nonmember customers, by loans or otherwise, in the acquisition by
1787 them of such installation and wiring, and the obtaining of such machinery, equipment and appliances, as
1788 will enable them to secure the greatest benefit from the use of utility services supplied by the
1789 cooperative.

1790 12. To issue nonassessable nonvoting common and preferred capital stock or similar securities and
1791 pay dividends thereon.

1792 13. 12. To become a member or stockholder in one or more other cooperatives or corporations
1793 created to engage in any business not prohibited by law, including, but not limited to, other types of
1794 public service company business.

1795 14. 13. To perform any and all of the foregoing acts and do any and all of the foregoing things
1796 under, through or by means of its own officers, agents and employees, or by contracts with any person,
1797 federal agency or municipality.

1798 **§ 56-231.24. Power to dispose of property.**

1799 No cooperative may sell, lease or dispose of all or substantially all of its property (other than
1800 property which, in the judgment of the board, is neither necessary nor useful in operating and
1801 maintaining the cooperative's system and which in any one year shall not exceed fifty percent in value
1802 of the value of all the property of the cooperative, or merchandise), unless authorized to do so by the
1803 votes of at least a two-thirds majority of its members; however, a cooperative (i) may mortgage, finance
1804 (including, without limitation, pursuant to a sale and leaseback or lease and leaseback transaction), or
1805 otherwise encumber its assets by a vote of at least two-thirds of its board of directors; (ii) may sell or
1806 transfer its assets to another cooperative upon the vote of a majority of its members at any regular or
1807 special meeting if the notice of such meeting contains a copy of the terms of the proposed sale or
1808 transfer; (iii) may sell or transfer distribution system facilities to a city or town at any time following
1809 the annexation of additional territory pursuant to § 56-265.4:2 by a vote of at least two-thirds of its
1810 board of directors; or (iv) may sell, lease or dispose of its property to an affiliate pursuant to a plan
1811 approved by the Commission in accordance with subsection B of § 56-590 by a vote of at least
1812 two-thirds of the members of the Board.

1813 **§ 56-231.32. Service to members.**

1814 No person shall become or remain a member unless such person shall use utility services supplied by
1815 such cooperative, *including electric distribution services used by the retail electric provider for services*
1816 *to the member*, and shall have complied with the terms and conditions in respect to membership
1817 contained in the bylaws of such cooperative. However, nothing in this article shall prevent a cooperative
1818 from engaging in other lawful activities or enterprises. Should the cooperative acquire any utility
1819 facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing
1820 service and avoiding hardship, continue to serve the persons served directly from such facilities at the
1821 time of such acquisition without requiring that such persons become members. Such nonmember utility
1822 service customers shall have the right to become members upon nondiscriminatory terms. The charges
1823 for regulated utility services to such nonmembers shall be on a cost basis similar to the charges to
1824 members.

1825 **§ 56-231.34. Regulation by Commission.**

1826 The regulated utility services of a cooperative shall be subject to the jurisdiction of the Commission
1827 in the same manner and to the same extent as are regulated utility services provided by other persons
1828 under the laws of ~~this~~ the Commonwealth. *For purposes of this article, electric distribution service is a*
1829 *regulated utility service.* All other business activities of a cooperative and its affiliates shall be subject to
1830 the jurisdiction of the Commission to the extent provided by § 56-231.34:1 and any other applicable
1831 laws of the Commonwealth.

1832 **§ 56-231.34:1. Separation of regulated and unregulated businesses.**

1833 A. No cooperative that engages in a regulated utility service shall conduct any unregulated business
1834 activity; ~~other than traditional cooperative activities~~, except in or through one or more affiliates of such
1835 cooperative; ~~provided that a cooperative that provides regulated utility services shall have the right to~~
1836 ~~offer and make unregulated sales of electric power to its members within its certificated service territory.~~
1837 No such affiliates, formed to engage in any business that is not a regulated utility service, shall engage
1838 in regulated utility services.

1839 B. The Commission shall promulgate rules and regulations, governing the conduct of the
1840 cooperatives, to promote effective and fair competition between (i) affiliates of cooperatives that are
1841 engaged in business activities which are not regulated utility services and (ii) other persons engaged in
1842 the same or similar businesses. The rules and regulations shall be effective by July 1, 2000, and shall

include provisions:

1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;
2. Prohibiting anticompetitive behavior or self-dealing between a cooperative and its affiliates;
3. Prohibiting a cooperative from engaging in discriminatory behavior towards nonaffiliated entities;

and

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

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

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

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

§ 56-231.38. Definitions.

As used in this article:

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

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

"Commission" means the State Corporation Commission of Virginia.

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

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

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

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

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

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

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

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

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

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

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

nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are other traditional cooperative activities.

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

§ 56-231.39. Organization and purpose.

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

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

C. Notwithstanding any other provision of this article, the only electric service that a cooperative

formed pursuant to this article may provide is electric transmission service within a certificated service territory of an electric distribution utility cooperative within the Commonwealth.

§ 56-231.43. Powers.

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

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

2. To sue and be sued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 56-231.47. Adoption of article.

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

§ 56-231.50. Regulation by State Corporation Commission.

The regulated utility services and operations of any cooperative organized under this article shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as are all other providers of such regulated utility services under the laws of this the Commonwealth; but with regard to sales of energy at wholesale, no cooperative shall be subject to the provisions of §§ 56-234 through 56-245, 56-247 and 56-249 through 56-249.6. For purposes of this article, electric transmission service is a regulated utility service. With regard to business activities which that are not regulated utility services, no cooperative shall be subject to the provisions of §§ 56-234 through 56-245 and, 56-249 through 56-249.6, 56-249.1, 56-249.2, and 56-249.5. All other business activities of a cooperative and its affiliates shall be subject to the jurisdiction of the Commission to the extent provided by § 56-231.50:1 and any other applicable laws of this the Commonwealth.

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

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

2027 shall engage in regulated utility services.

2028 B. The Commission shall promulgate rules and regulations to promote effective and fair competition
 2029 between (i) affiliates of cooperatives that are engaged in business activities which are not regulated
 2030 utility services and (ii) other persons engaged in the same or similar businesses. The rules and
 2031 regulations shall be effective by July 1, 2000, and shall include provisions:

2032 1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;
 2033 2. Prohibiting anticompetitive behavior or self-dealing between a cooperative and its affiliates;
 2034 3. Prohibiting a cooperative from engaging in discriminatory behavior towards nonaffiliated entities;
 2035 and

2036 4. Establishing codes of conduct detailing permissible relations between a cooperative and its
 2037 affiliates. In establishing such codes, the Commission shall consider, among other things, whether and, if
 2038 so, under what circumstances and conditions (i) a cooperative may provide its affiliates with customer
 2039 lists or other customer information, sales leads, procurement advice, joint promotions, and access to
 2040 billing or mailing systems unless such information or services are made available to third parties under
 2041 the same terms and conditions, (ii) the cooperative's name, logos or trademarks may be used in
 2042 promotional, advertising or sales activities conducted by its affiliates, and (iii) the cooperative's vehicles,
 2043 equipment, office space and employees may be used by its affiliates.

2044 C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under
 2045 Chapter 4 (§ 56-76 et seq.) of this title.

2046 **§ 56-231.51. Construction of article and conflicting laws.**

2047 This article is to be liberally construed and the enumeration of any object, purpose, power, manner,
 2048 method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners,
 2049 methods or things, and any provisions of other laws in conflict with the provisions of this article, *except*
 2050 *the provisions of this title that pertain to electric transmission service*, shall not apply to cooperatives
 2051 operating hereunder. Any object, purpose, power, manner, method or thing which is not specifically
 2052 prohibited is permitted.

2053 **§ 56-232. Definitions.**

2054 A. The term "public *Public utility*" as used in §§ 56-233 ~~to through~~ 56-240 and 56-246 ~~to through~~
 2055 56-250:

2056 1. Shall mean and embrace every corporation ~~(other than a municipality)~~ *except as provided in*
 2057 *subdivision 4*, company, individual, *municipal electric authority*, or association of individuals or
 2058 cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that now or hereafter
 2059 may own, manage or control any plant or equipment or any part of a plant or equipment within the
 2060 Commonwealth for the conveyance of telephone messages or for the (i) production, transmission,
 2061 delivery, or furnishing of heat, chilled air, chilled water, ~~light, power~~, or water, or sewerage facilities,
 2062 either directly or indirectly, to or for the public or (ii) *furnishing of electric transmission or distribution*
 2063 *service*.

2064 2. Notwithstanding any provision of subdivision 1 of this subsection or subsection G of § 13.1-620,
 2065 shall also include any governmental entity established pursuant to the laws of any other state,
 2066 corporation ~~(other than a municipality established under the laws of this Commonwealth)~~ *except as*
 2067 *provided in subdivision 4*, company, individual, or association of individuals or cooperative, their
 2068 lessees, trustees, or receivers, appointed by any court whatsoever, that at any time owns, manages or
 2069 controls any plant or equipment, or any part thereof, located within the Commonwealth, which plant or
 2070 equipment is used in the provision of sewage treatment services to or for an authority as defined in
 2071 § 15.2-5101; however, the Commission shall have no jurisdiction to regulate the rates, terms and
 2072 conditions of sewage treatment services that are provided by any such public utility directly to persons
 2073 pursuant to the terms of a franchise agreement between the public utility and a municipality established
 2074 under the laws of ~~this~~ *the* Commonwealth.

2075 3. Except as provided in subdivision 2, shall not be construed to include any corporation created
 2076 under the provisions of Title 13.1 unless the articles of incorporation expressly state that the corporation
 2077 is to conduct business as a public service company.

2078 *As used in this subsection, the term "corporation" does not mean a municipality except a*
 2079 *municipality that provides electric transmission or distribution service.*

2080 B. Notwithstanding any provision of law to the contrary, no person, firm, corporation, or other entity
 2081 shall be deemed a public utility or public service company, solely by virtue of engaging in production,
 2082 transmission, or sale at retail of electric power as a qualifying small power producer using renewable or
 2083 nondepletable primary energy sources within the meaning of regulations adopted by the Federal Energy
 2084 Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L.
 2085 95-617) and not exceeding 7.5 megawatts of rated capacity, nor solely by virtue of serving as an
 2086 aggregator of the production of such small power producers, provided that the portion of the output of
 2087 any qualifying small power producer which is sold at retail shall not be sold to residential consumers.

2088 C. No qualifying small power producer, within the meaning of regulations adopted by the Federal

2089 Energy Regulatory Commission, shall be deemed a public utility within the meaning of Chapter 7
 2090 (§ 62-1-80 et seq.) of Title 62-1.

2091 D. The term "public utility" as herein defined in subsection A shall not be construed to include any
 2092 chilled water air-conditioning cooperative serving residences in less than a one square mile area, or any
 2093 company that is excluded from the definition of "public utility" by subdivision (b)(4), (b)(8), (b)(9) 2, 6
 2094 or (b)(10) 7 of the such definition in § 56-265.1.

2095 E. C. Subject to the provisions of § 56-232.1, the term "schedules" as used in §§ 56-234 through
 2096 56-245 shall include schedules of rates and charges for service to the public and also contracts for rates
 2097 and charges in sales at wholesale to other public utilities or for divisions of rates between public
 2098 utilities, but shall not include contracts of telephone companies with the state government or contracts of
 2099 other public utilities with municipal corporations or the federal or state government, or any contract
 2100 executed prior to July 1, 1950.

2101 D. As used in this chapter:

2102 "Electric utility" means a public utility that furnishes electric transmission or distribution utility
 2103 service.

2104 "Independent distribution system operator" means the independent distribution system operator
 2105 established under § 56-624.

2106 "Municipal electric authority" means an electric authority created by a municipality under Chapter
 2107 54 (§ 15.2-5400 et seq.) of Title 15.2.

2108 "Power generation company" means a person owning, controlling, or operating a facility in the
 2109 Commonwealth that produces electricity for sale.

2110 **§ 56-234. Duty to furnish adequate service at reasonable and uniform rates.**

2111 A. It shall be the duty of every public utility to furnish reasonably adequate service and facilities at
 2112 reasonable and just rates to any person, firm or corporation along its lines desiring same.
 2113 Notwithstanding any other provision of law:

2114 1. A telephone company shall not have the duty to extend or expand its facilities to furnish service
 2115 and facilities when the person, firm or corporation has service available from one or more alternative
 2116 providers of wireline or terrestrial wireless communications services at prevailing market rates; and

2117 2. A telephone company may meet its duty to furnish reasonably adequate service and facilities
 2118 through the use of any and all available wireline and terrestrial wireless technologies; however, a
 2119 telephone company, when restoring service to an existing wireline customer, shall offer the option to
 2120 furnish service using wireline facilities.

2121 For purposes of subdivisions 1 and 2, the Commission shall have the authority upon request of an
 2122 individual, corporation, or other entity, or a telephone company, to determine whether the wireline or
 2123 terrestrial wireless communications service available to the party requesting service is a reasonably
 2124 adequate alternative to local exchange telephone service.

2125 The use by a telephone company of wireline and terrestrial wireless technologies shall not be
 2126 construed to grant any additional jurisdiction or authority to the Commission over such technologies.

2127 For purposes of subdivision 1, "prevailing market rates" means rates similar to those generally
 2128 available to consumers in competitive areas for the same services.

2129 B. It shall be the duty of every public utility to charge uniformly therefor all persons, corporations or
 2130 municipal corporations using such service under like conditions. However, no provision of law shall be
 2131 deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the
 2132 use of special rates, where such experiments have been approved by order of the Commission after
 2133 notice and hearing and a finding that such experiments are necessary in order to acquire information
 2134 which is or may be in furtherance of the public interest. The Commission's final order regarding any
 2135 petition filed by an investor-owned electric utility for approval of a voluntary rate or rate design test or
 2136 experiment shall be entered the earlier of not more than six months after the filing of the petition or not
 2137 more than three months after the date of any evidentiary hearing concerning such petition. The charge
 2138 for such service shall be at the lowest rate applicable for such service in accordance with schedules filed
 2139 with the Commission pursuant to § 56-236. But, subject to the provisions of § 56-232.1, nothing
 2140 contained herein or in § 56-481.1 shall apply to (i) schedules of rates for any telecommunications
 2141 service provided to the public by virtue of any contract with, (ii) for any service provided under or
 2142 relating to a contract for telecommunications services with, or (iii) contracts for service rendered by any
 2143 telephone company to, the state government or any agency thereof, or by any other public utility to any
 2144 municipal corporation or to the state or federal government. The provisions hereof shall not apply to or
 2145 in any way affect any proceeding pending in the State Corporation Commission on or before July 1,
 2146 1950, and shall not confer on the Commission any jurisdiction not now vested in it with respect to any
 2147 such proceeding.

2148 C. The Commission may conclude that competition can effectively ensure reasonably adequate retail
 2149 services in competitive exchanges and may carry out its duty to ensure that a public utility is furnishing

2150 reasonably adequate retail service in its competitive exchanges by monitoring individual customer
2151 complaints and requiring appropriate responses to such complaints.

2152 **§ 56-234.1. Liability to customer for violation of duty to determine and charge lowest rate**
2153 **applicable.**

2154 It shall be the duty of every public utility, upon written request by the customer, to determine the
2155 lowest rate applicable, provided that such public utility shall not be required to make such a
2156 determination for any single customer more frequently than annually. If the rate charged thereafter is not
2157 such lowest rate applicable, such public utility shall be liable to the customer for the amount of the
2158 difference between the amount paid by the customer and the amount that would have been paid if the
2159 customer had been charged the lowest rate applicable from and after the customer's request; provided
2160 that the public utility may require and rely on written information from the customer relating to the
2161 customer's expected demand for and use of the utility service where such information is relevant to the
2162 determination required hereunder. Where a contract for a specified period of time is lawfully required by
2163 the public utility, the rates prescribed by such contract shall be lawful during the term of such contract
2164 so long as they are the lowest applicable to the conditions of service specified in the contract, unless the
2165 actual conditions of service require the application of a higher rate. This section shall not be applicable
2166 to rates charged by any public utility (i) prior to July 1, 1970, or (ii) that provides electric transmission
2167 or distribution service.

2168 **§ 56-234.2. Review of rates.**

2169 The Commission shall review the rates of any public utility on an annual basis when, in the opinion
2170 of the Commission, such annual review is in the public interest; provided that the rates of a public
2171 utility subject to § 56-585.1 shall be reviewed in accordance with subsection A of that section.

2172 **§ 56-234.3. Monitoring of capital projects and practices of electric utilities.**

2173 Prior to construction or financial commitments therefor, any electric utility subject to the jurisdiction
2174 of the State Corporation Commission intending to construct any new generation facility capable of
2175 producing 100 megawatts or more of electric energy shall submit to the State Corporation Commission a
2176 petition setting forth the nature of the proposed construction and the necessity therefor in relation to its
2177 projected forecast of programs of operation. Such petition shall include (i) the utility's preliminary
2178 construction plans, (ii) the methods by which the work will be contracted, by competitive bid or
2179 otherwise, (iii) the names and addresses of the contractors and subcontractors, when known, proposed to
2180 do such work, and (iv) the plan by which the public utility will monitor such construction to ensure that
2181 the work will be done in a proper, expeditious and efficient manner. The Commission, upon receipt of
2182 the petition, shall order that a public hearing be held to assist it in accumulating as much relevant data
2183 as possible in reaching its determination for the necessity of the proposed generation facility. The
2184 Commission shall review the petition, consider the testimony given at the public hearing, and determine
2185 whether the proposed improvements are necessary to enable the public utility to furnish reasonably
2186 adequate service and facilities at reasonable and just rates. After making its determination, the
2187 Commission shall enter an order within nine months after the filing of such petition either approving or
2188 disapproving the proposed expenditure. Upon approval, the Commission shall set forth in its order terms
2189 and conditions it deems necessary for the efficient and proper construction of the generation facility.

2190 Every electric utility capable of producing 100 megawatts or more of electric energy shall file with
2191 the Commission a projected forecast of its programs of operation, on such terms and for such time
2192 periods as directed by the Commission. Such a forecast shall include, but not be limited to, the
2193 anticipated required capacity to fulfill the requirements of the forecast, how the utility will achieve such
2194 capacity, the financial requirements for the period covered, the anticipated sources of those financial
2195 requirements, the research and development procedures, where appropriate, of new energy sources, and
2196 the budget for the research and development program.

2197 In addition, theThe Commission shall investigate and monitor the major construction projects of any
2198 public utility *subject to its jurisdiction* to assure that such projects are being conducted in an
2199 economical, expeditious, and efficient manner.

2200 Whenever uneconomical, inefficient or wasteful practices, procedures, designs or planning are found
2201 to exist, the Commission shall have the authority to employ, at the sole expense of the utility, qualified
2202 persons, answerable solely to the Commission, who shall audit and investigate such practices,
2203 procedures, designs or planning and recommend to the Commission measures necessary to correct or
2204 eliminate such practices, procedures, designs or planning.

2205 Consistent with § 56-235.3, any public utility, electric or otherwise, seeking to pass through the cost
2206 of any capital project to its customers, shall have the burden of proving that such cost was incurred
2207 through reasonable, proper and efficient practices, and to the extent that such public utility fails to bear
2208 such burden of proof, such costs shall not be passed on to its customers in its rate base.

2209 The Commission shall have the authority to approve, disapprove, or alter the utility's program in a
2210 manner consistent with the best interest of the citizens of the Commonwealth. The petitioning or filing
2211 public utility may appeal the decision of the Commission to the Supreme Court of Virginia.

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

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

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

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

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

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

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

~~B.~~ E. The Commission shall, before approving special rates, contracts, incentives or other alternative regulatory plans under subsection A, ensure that such action (i) protects the public interest, (ii) will not

2273 unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize
2274 the continuation of reliable electric service.

2275 ~~C. F.~~ After notice and public hearing, the Commission shall issue guidelines for special rates adopted
2276 pursuant to subsection A that will ensure that other customers are not caused to bear increased rates as a
2277 result of such special rates.

2278 **§ 56-235.3. Procedures for investigation of rate applications.**

2279 At any hearing on the application of a public utility *or independent distribution system operator* for a
2280 change in a rate, toll, charge, or schedule, the burden of proof to show that the proposed change is just
2281 and reasonable, shall be upon the ~~public utility applicant~~. The Commission shall be authorized to
2282 prescribe all necessary rules and regulations for the conduct of such hearings, which shall provide for
2283 full and fair participation in such hearings by any interested person subject to such guidelines as the
2284 Commission may deem appropriate. Upon the conclusion of such hearings, the Commission shall issue
2285 an order and such opinion as is necessary to set forth fully the Commission's findings of fact and
2286 conclusions of law. Copies of the transcripts of public hearings held to establish a fair rate of return and
2287 changes in rates, tolls, and charges for investor-owned public utilities involving significant public
2288 interest shall be placed in no less than one location nor more than three locations in the geographic area
2289 served by the utility. The Commission shall determine which proceedings are of sufficient interest to
2290 require the placing of such transcripts and the location or locations to be used, provided, however, that
2291 proceedings involving investor-owned utilities serving 25,000 or more customers shall be deemed to be
2292 of sufficient public interest.

2293 **§ 56-235.4. Prohibition of multiple rate increases within any 12-month period; exception.**

2294 A. The regulated operating revenues of a public utility shall not be increased pursuant to Chapter 9.1
2295 (§ 56-231.15 et seq.), 10 (§ 56-232 et seq.) or 19 (§ 56-531 et seq.) of this title more than once within
2296 any twelve-month period. This limitation shall not apply to increases in regulated operating revenues
2297 resulting from (i) increases in rates pursuant to § 56-245 ~~or § 56-249.6~~, (ii) any automatic rate
2298 adjustment clause approved by the Commission, (iii) new rate schedules for service not offered under
2299 existing rate schedules or for expansion, reduction, or termination of existing services, (iv) initiation,
2300 modification or termination of experimental rates under § 56-234, or (v) the making permanent of an
2301 experimental program. Notwithstanding any other provisions of this section, a telephone company may
2302 apply to the Commission to pass on to its customers as a part of its rates any changes approved by the
2303 Commission in the carrier access charges.

2304 B. The Commission may adopt such rules and regulations as may be necessary to carry out the
2305 provisions of this section. The Commission may specify, by rule, the time during the calendar year
2306 when application may be filed by electric utility and cooperatives, gas utilities, telephone utilities and
2307 cooperatives, and other utilities.

2308 The Commission may by rule provide standards and procedures for expedited handling of rate
2309 increase applications, and such rules may provide that an expedited rate increase may take effect in less
2310 than twelve months after the preceding increase so long as regulated operating revenues are not
2311 increased pursuant to the provisions of subsection A of this section more than once in any calendar year.

2312 **§ 56-235.6. Performance-based regulation of certain utilities.**

2313 A. Notwithstanding any provision of law to the contrary, the Commission ~~may approve~~ *shall adopt* a
2314 performance-based ratemaking methodology for any public utility engaged in the business of furnishing
2315 ~~gas service (for the purposes of this section a "gas utility") or electricity~~ *electric transmission or*
2316 *distribution service (for the purposes of this section an "electric utility")*; ~~upon application of the gas~~
2317 ~~utility or electric utility, and~~ after such notice and opportunity for hearing as the Commission may
2318 prescribe. *Notwithstanding any provision of law to the contrary, the Commission may approve a*
2319 *performance-based ratemaking methodology for any public utility engaged in the business of furnishing*
2320 *gas service (for the purposes of this section a "gas utility"), upon application of the gas utility, and after*
2321 *such notice and opportunity for hearing as the Commission may prescribe.* For the purposes of this
2322 section, "performance-based ratemaking methodology" shall mean a method of establishing rates and
2323 charges that are in the public interest, and that departs in whole or in part from the cost-of-service
2324 methodology set forth in § 56-235.2. *An electric utility shall apply for a performance-based ratemaking*
2325 *methodology under this section before it provides electric transmission or distribution service in the*
2326 *Commonwealth or by June 1, 2022, whichever is later.*

2327 B. The Commission shall approve such performance-based ratemaking methodology if it finds that it:
2328 (i) preserves adequate service to all classes of customers (including transportation-only customers if for
2329 a gas utility); (ii) does not unreasonably prejudice or disadvantage any class of gas utility or electric
2330 utility customers; (iii) provides incentives for improved performance by the gas utility or electric utility
2331 in the conduct of its public duties; (iv) results in rates that are not excessive; ~~and~~ (v) is in the public
2332 interest; *(vi) provides that the utility's recovery of authorized fixed costs is decoupled from fluctuations*
2333 *in sales in a manner that ensures the avoidance of over-recovery or under-recovery of such costs; and*
2334 *(vii) minimizes the incentive for the utility to add to its rate base in order to increase the utility's*

revenues. 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) (a) any proposed measures, including investments in infrastructure, that are reasonably estimated to preserve or improve system reliability, safety, supply diversity, and gas utility transportation options; and (ii) (b) other customer benefits that are reasonably estimated to accrue from the gas or electric utility's proposal.

C. 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

2396 refunds or otherwise; and transition costs are costs incurred by the gas utility associated with educating
2397 the public on retail supply choice and redesigning its facilities, operations and systems to permit retail
2398 supply choice;

2399 4. Tariff provisions to balance the receipts and deliveries of gas supplies to retail supply choice
2400 customers and allocate the gas utility's gas costs so that one class of customers is not subsidized by
2401 another class of customers;

2402 5. Tariff provisions requiring the gas utility, at a minimum, to offer gas suppliers or retail supply
2403 choice customers the right to acquire the gas utility's upstream transmission and/or storage capacity in a
2404 manner that assures that one class of customers is not subsidized by another class of customers,
2405 provided that nothing contained herein shall deny the gas utility the right to request Commission
2406 approval of such tariff provisions as are designed to ensure the safe and reliable delivery of natural gas
2407 to firm service customers on its system, including provisions requiring gas suppliers to accept
2408 assignment of upstream transportation and storage capacity, and/or allowing the gas utility to retain a
2409 portion of its upstream transportation and storage capacity to ensure safe and reliable natural gas service
2410 to its customers;

2411 6. A code of conduct governing the activities and relationships between the gas utility and gas
2412 suppliers to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market
2413 power. Such codes of conduct shall incorporate or be consistent with any rule or guideline established
2414 by the Commission; and

2415 7. Any other requirement established by Commission rule or regulation.

2416 The Commission may, by rule or regulation, impose such additional filing requirements as it deems
2417 necessary in the public interest. The Commission may also require a gas utility to continue to serve as a
2418 gas supplier to its customers after the gas utility's plan becomes effective and under such terms and
2419 conditions as are necessary to protect the public interest.

2420 B. After the Commission has accepted a filing as provided in subsection A, the Commission shall
2421 review and approve a plan filed by a gas utility unless it determines, after notice and an opportunity for
2422 public hearing, that the plan would:

2423 1. Adversely affect the quality, safety, or reliability of natural gas service by the gas utility or the
2424 provision of adequate service to the gas utility's customers;

2425 2. Result in rates charged by the gas utility that are not just and reasonable rates within the
2426 contemplation of § 56-235.2 or that are in excess of levels approved by the Commission under
2427 § 56-235.6, as the case may be;

2428 3. Adversely affect the gas utility's customers not participating in the retail supply choice plan;

2429 4. Unreasonably discriminate against one class of the gas utility's customers in favor of another class
2430 (provided, however, that a gas utility's recovery of nongas fixed costs on a nonvolumetric basis shall not
2431 necessarily constitute unreasonable discrimination); or

2432 5. Not be in the public interest.

2433 The Commission shall, after the acceptance of a filing of a retail supply choice plan, approve or
2434 disapprove the plan within 120 days. The 120-day period may be extended by Commission order for an
2435 additional period not to exceed sixty days. The retail supply choice plan shall be deemed approved if the
2436 Commission fails to act within 120 days or any extended period ordered by the Commission. The
2437 Commission shall approve a retail supply choice plan filed by a gas utility pursuant to this subsection
2438 regardless of whether it has promulgated rules and regulations pursuant to subsection A. The
2439 Commission may also modify a plan filed by a gas utility to ensure that it conforms to the provisions of
2440 this subsection and is otherwise in the public interest. Plans approved pursuant to this section shall not
2441 be placed into effect before July 1, 2000.

2442 C. The Commission may, on its own motion, direct a gas utility to file a retail supply choice plan,
2443 which shall comply with subsection A, shall include such other details in the plan as the Commission
2444 may require, and does not cause the effects set forth in subsection B, or the Commission may, on its
2445 own motion, propose a plan for a gas utility for retail supply choice that complies with the requirements
2446 of subsection A and does not cause the effects set forth in subsection B. The Commission may approve
2447 any plans under this subsection after notice to all affected parties and an opportunity for hearing.

2448 D. Once a plan becomes effective pursuant to this section, if the Commission determines, after notice
2449 and opportunity for hearing, that the plan is causing, or is reasonably likely to cause, the effects set
2450 forth in subsection B, it may order revisions to the plan to remove such effects. Any such revisions to
2451 the plan will operate prospectively only.

2452 E. If, upon application of at least twenty-five percent of retail supply choice customers or of 500
2453 retail choice customers, whichever number is lesser, or by the gas utility, it is alleged that the
2454 marketplace for retail supply choice customer is not reasonably competitive or results in rates
2455 unreasonably in excess of what would otherwise be charged by the gas utility, or if the Commission
2456 renders such a determination upon its own motion, then the Commission may, after notice, and
2457 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 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

2519 brought.

2520 6. The circuit court may make such additional orders or decrees as may be necessary to restore to
2521 any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which
2522 may have been acquired from such person by means of any act or practice violative of this subsection,
2523 provided that such person shall be identified by order of the court within 180 days from the date of any
2524 order permanently enjoining the unlawful act or practice.

2525 7. In any case arising under this subsection, no liability shall be imposed upon any gas supplier who
2526 shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of
2527 subdivision 1 of this subsection was an act or practice over which the same had no control or (ii) the
2528 alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures
2529 reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from
2530 ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subdivision 4
2531 of this subsection to individuals aggrieved as a result of an unintentional violation of this subsection.

2532 H. Authorized public utilities shall file with the Commission tariff revisions reflecting the net effect
2533 of the elimination of taxes pursuant to subsection B of § 58.1-2904 and the addition of state income
2534 taxes pursuant to § 58.1-400. Such tariffs shall be effective for service rendered on and after January 1,
2535 2001, and shall be filed at least forty-five days prior to the effective date. Such filing shall not constitute
2536 a rate increase for the purposes of § 56-235.4.

2537 I. Consumer education.

2538 1. The Commission shall develop a consumer education program designed to provide the following
2539 information to retail customers concerning retail supply choice for natural gas customers:

2540 a. Opportunities and options in choosing natural gas suppliers;

2541 b. Marketing and billing information gas suppliers will be required to furnish retail customers;

2542 c. Retail customers' rights and obligations concerning the purchase of natural gas and related
2543 services; and

2544 d. Such other information as the Commission may deem necessary and appropriate and in the public
2545 interest.

2546 2. The consumer education program authorized herein may be conducted in conjunction with the
2547 program provided for in § ~~56-592~~ 56-637.

2548 3. The Commission shall establish or maintain a complaint bureau for the purpose of receiving,
2549 reviewing and investigating complaints by retail customers against gas utilities, public service
2550 companies, licensed suppliers and other providers of any services affected by this section. Upon the
2551 request of any interested person or the Attorney General, or upon its own motion, the Commission shall
2552 be authorized to inquire into possible violations of § 56-235.8 and to enjoin or punish any violations
2553 thereof pursuant to its authority under § 56-235.8, this title, or Title 12.1. The Attorney General shall
2554 have a right to participate in such proceedings consistent with the Commission's Rules of Practice and
2555 Procedure.

2556 4. For all billing statements sent on and after August 1, 2000, all gas utilities, as defined in
2557 subsection A, shall enclose the following information in all billing statements for retail natural gas
2558 service:

2559 a. Gas utilities shall separately state an approximate amount of the tax imposed under §§ 58.1-2626,
2560 58.1-2660 and 58.1-3731 which is included in the customer's bill until such tax is no longer imposed;
2561 and

2562 b. For all such billing statements, a statement which reads as follows shall be included: "Beginning
2563 January 1, 2001, the current state and local gross receipts taxes on sales of natural gas will be replaced
2564 by a tax based on the consumption of natural gas by consumers. In the past, the current gross receipts
2565 tax has always been included in the rate charged for natural gas. Now, this tax is being separately
2566 stated. The total gross receipts tax imposed by Virginia and the localities is approximately two percent
2567 of the amount charged to consumers. The new state and local consumption tax will be charged at an
2568 approximate rate of \$0.02 per 100 cubic feet (CCF) of natural gas consumed. While this rate was
2569 designed to be less than, or equal to, the effect of the current gross receipts tax which is being replaced,
2570 the tax you pay may actually be higher in your locality. This statement is being provided for your
2571 information."

2572 **§ 56-235.12. Economic development programs.**

2573 A. As used in this section:

2574 "Acquire utility rights-of-way" means the planning, surveying, permitting, and acquisition of land,
2575 including options, easements, and other estates in land.

2576 "Costs" includes depreciation, taxes, return on investment, and other land-related costs associated
2577 with costs incurred to acquire utility rights-of-way pursuant to a Program.

2578 "Economic Development Program" or "Program" means a program under which a utility is
2579 authorized by the Commission under this section to acquire utility rights-of-way for one or more
2580 qualified economic development sites.

"Partnership" means the Virginia Economic Development Partnership Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H. In calculating the utility's return on the investment with regard to costs incurred in implementing a Program, the Commission shall use the utility's regulatory capital structure, including the cost of

equity most recently approved by the Commission. If the utility's cost of capital at the time its Economic Development Program is filed has not been changed by order of the Commission within the preceding five years, the Commission may require the utility to file an updated weighted average cost of capital, and the utility may propose an updated weighted average cost of capital.

I. Nothing in this section shall:

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

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

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

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

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

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

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

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

The Commission, either upon complaint or on its own motion, may suspend the enforcement of any or all of the proposed rates, tolls, charges, rules or regulations for schedules required to be filed under § 56-236 of any public utility, except an investor-owned electric public utility, for a period not exceeding 150 days, or if the public utility is an investor-owned water utility not subject to Chapter 10.2:1 (§ 56-265.13:1 et seq.) for a period not exceeding 180 days, from the date of filing, and the Commission shall suspend the enforcement of all of the proposed rates, tolls, charges, rules or regulations of an investor-owned electric public utility until the Commission's final order in the proceeding, during which times the Commission shall investigate the reasonableness or justice of such proposed rates, tolls, charges, rules and regulations and thereupon fix and order substituted therefor such rates, tolls, charges, rules and regulations as shall be just and reasonable. The Commission's final order in such a proceeding involving an investor-owned electric public utility that is filed after January 1, 2010, shall be entered not more than nine months after the date of filing, at which time the suspension period shall expire, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order. Notice of the suspension of any such proposed rate, toll, charge, rule or regulation shall be given by the Commission to the public utility, prior to the expiration of the 30 days' notice to the Commission and the public heretofore provided for. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the public utility making the filing, the proposed rates, tolls, charges, rules or regulations shall go into effect. Where increased rates, tolls or charges are thus made effective, the Commission shall, by order, require the public utility to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, and upon completion of the hearing and decision, to order such public utility to refund, with interest at a rate set by the Commission, the portion of such increased rates, tolls or charges by its decision found not justified. The Commission shall prescribe all necessary rules and regulations to effectuate the purposes of this section on or before September 1, 1980. This section shall not apply to proceedings conducted pursuant to § 56-245 ~~or~~ 56-249.6.

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

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

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

A. Notwithstanding any law to the contrary, the Commission shall promulgate regulations and

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

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

C. In implementing this section, no apartment house, office building, shopping center, or campground shall be considered a public utility or public service corporation engaged in the business of (i) *electric distribution service* or (ii) distributing or reselling ~~electricity or~~ gas except as provided in subsection B. The apartment house, office building, shopping center, or campground may use submetering or energy allocation equipment solely to allocate the costs of electric or gas service fairly among the tenants using the apartment house, office building, shopping center, or campground.

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

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

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

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

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

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

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

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

7. Any ~~electric~~ utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) may install and operate, upon a customer's request and pursuant to an appropriate tariff for any type or classification of service, a prepaid metering equipment and system that is configured to terminate ~~electric~~ service immediately and automatically when the customer has incurred charges for electric service equal to the

customer's prepayments for such service. Subdivisions 1, 2, 4, and 5 shall not apply to services provided pursuant to electric service provided on a prepaid basis by a prepaid metering equipment and system pursuant to this subsection. Such tariffs shall be filed with the Commission for its review and determination that the tariff is not contrary to the public interest.

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

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

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

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

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

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

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

If, from any rural territory not now being served, application be made to the Commission by a group of five or more persons, natural or artificial, to require an extension of electric ~~utility~~ service to such territory, the Commission shall, if necessary to accomplish the purposes sought, fix a time for hearing such application, on such terms and conditions as the Commission may prescribe, and, if it be established to the satisfaction of the Commission that a proper guaranteed revenue for a sufficient number of years will accrue to any company which may be required to construct the desired extension, and that a reasonable investment will accrue to the company constructing such extension, then the Commission is hereby authorized and empowered to require the nearest or most advantageously located electric utility company to such territory to construct such extension to such point or points in such territory and to serve such customer or customers therein, as in its judgment is right and proper.

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

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

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

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

§ 56-265.1. Definitions.

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

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

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

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

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

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

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant; and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant; and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

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

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

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

(7) 5. Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or

2888 industrial customer from a solid waste management facility permitted by the Department of
2889 Environmental Quality and operated by that same authority, if such an authority limits off-premises sale,
2890 transmission or delivery service of landfill gas to no more than one purchaser. The authority may
2891 contract with other persons for the construction and operation of facilities necessary or convenient to the
2892 sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely
2893 by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located
2894 within the certificated service territory of a natural gas public utility, the public utility may file for
2895 Commission approval a proposed tariff to reflect any anticipated or known changes in service to the
2896 purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the
2897 landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities;
2898 provided, however, that such tariff may impose such requirements as are reasonably calculated to
2899 recover the cost of such service and to protect and ensure the safety and integrity of the public utility's
2900 facilities.

2901 (8) 6. A company selling or delivering only landfill gas, electricity generated from only landfill gas,
2902 or both, that is derived from a solid waste management facility permitted by the Department of
2903 Environmental Quality and sold or delivered from any such facility to not more than three commercial
2904 or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as
2905 authorized by this section. If a purchaser of the landfill gas is located within the certificated service
2906 territory of a natural gas public utility or within an area in which a municipal corporation provides gas
2907 distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such
2908 company shall submit to such public utility or municipal corporation a written offer for sale of that gas
2909 prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility
2910 or municipal corporation does not agree within 60 days following the date of the offer to purchase such
2911 landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill
2912 gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or
2913 county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated
2914 or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No
2915 such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on
2916 similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may
2917 impose such requirements as are reasonably calculated to recover any cost of such service and to protect
2918 and ensure the safety and integrity of the public utility's facilities.

2919 (9) 7. A company that is not organized as a public service company pursuant to subsection D of
2920 § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company
2921 excluded by this subdivision from the definition of "public utility" for the purposes of this chapter
2922 nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and
2923 enforcement.

2924 (10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for
2925 the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i)
2926 "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural
2927 operations and produces the agricultural waste used as feedstock for the waste-to-energy technology, (ii)
2928 "agricultural waste" means biomass waste materials capable of decomposition that are produced from the
2929 raising of plants and animals during agricultural operations, including animal manures, bedding, plant
2930 stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means any technology,
2931 including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat
2932 that is used to generate electricity on-site.

2933 (11) 8. A company, other than an entity organized as a public service company, that provides
2934 non-utility gas service as provided in § 56-265.4:6.

2935 (12) A company, other than an entity organized as a public service company, that provides storage of
2936 electric energy that is not for sale to the public.

2937 (c) "Commission" means the State Corporation Commission.

2938 (d) "Geothermal resources" means those resources as defined in § 45.1-179.2.

2939 § 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new
2940 facilities.

2941 A. 1. Subject to the provisions of subdivision 2 subsection B, it shall be unlawful for any public
2942 utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility
2943 service, except ordinary extensions or improvements in the usual course of business, without first having
2944 obtained a certificate from the Commission that the public convenience and necessity require the
2945 exercise of such right or privilege. Any certificate required by this section shall be issued by the
2946 Commission only after opportunity for a hearing and after due notice to interested parties. The certificate
2947 for overhead electrical transmission lines of 138 kilovolts or more shall be issued by the Commission
2948 only after compliance with the provisions of § 56-46.1.

2949 2. B. For construction of any transmission line of 138 kilovolts and associated facilities, a public

utility shall either (i) obtain a certificate pursuant to ~~subdivision 4 subsection A~~ or (ii) obtain approval pursuant to the requirements of (a) § 15.2-2232 and (b) any applicable local zoning ordinances by the locality or localities in which the transmission line will be located. Issuance by the Commission of a certificate pursuant to ~~subdivision 4 subsection A~~ approving construction of a 138 kilovolt transmission line and any associated facilities shall be deemed to satisfy the requirements of § 15.2-2232 and all local zoning ordinances with respect to the transmission line and its associated facilities. For purposes of this ~~subdivision subsection~~, "associated facilities" include any station, substation, transition station, and switchyard facilities to be constructed outside of any county operating under the county executive form of government that is located in Planning District 8 in association with a 138 kilovolt transmission line.

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

C. A map showing the location of any proposed ordinary extension or improvement outside of the territory in which the public utility is lawfully authorized to operate shall be filed with the Commission, and prior notice of such ordinary extension shall be given to the public utility or other entity authorized to provide the same utility service within said territory. Ordinary extensions outside the service territory of a public utility shall be undertaken only for use in providing its public utility service and shall be constructed and operated so as not to interfere with the service or facilities of any public utility or other entity authorized to provide utility service within any other territory. If, upon objection of the affected utility or entity filed within 30 days of the aforesaid notice and after investigation and opportunity for a hearing the Commission finds an ordinary extension would not comply with this section, it may alter or amend the plan for such activity or prohibit its construction.

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

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

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

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

3011 *within 90 days from such date, showing the territory now being served by it, be entitled to receive a*
3012 *certificate of convenience and necessity authorizing it to begin to furnish such electric transmission or*
3013 *distribution utility service in such territory.*

3014 B. On initial application by any company, the Commission, after formal or informal hearing upon
3015 such notice to the public as the Commission may prescribe, may, by issuance of a certificate of
3016 convenience and necessity, allot territory for development of public utility service by the applicant if the
3017 Commission finds such action in the public interest.

3018 C. If the initial application provides for the furnishing of water or sewerage service within any
3019 political subdivision in which there has been created an authority for either or both of such purposes
3020 pursuant to Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2, the Commission shall not hold any hearing
3021 on such application or issue any certificate for the allotment of territory unless the application shall first
3022 have been approved by the governing body of the political subdivision in which the territory is located.
3023 In any area where a water company was in existence and furnishing water prior to the formation of an
3024 authority to provide water, the Commission may hold a hearing on an application and issue a certificate
3025 to the water company for that territory which was served prior to the creation of the authority whether
3026 or not the governing body of the political subdivision has approved the application. In any area where a
3027 sewer company was in existence and furnishing sewer services prior to the formation of an authority to
3028 provide sewer services, the Commission may hold a hearing on an application and issue a certificate to
3029 the sewer company for that territory which was served prior to the creation of the authority whether or
3030 not the governing body of the political subdivision has approved the application.

3031 D. If the Commission finds it to be in the public interest, upon the application of a holder of a water
3032 or sewer certificate, such certificate may be transferred, leased or amended after such reasonable notice
3033 to the public and opportunity to be heard as the Commission by order may prescribe. The Commission
3034 may authorize the transfer, lease, or amendment of the certificate subject to such restrictions as the
3035 Commission finds will promote the public interest.

3036 E. The Commission is authorized to promulgate any rules necessary to implement this section.

3037 **§ 56-265.4:1. Furnishing of electric public utility service or provision of facilities therefor by**
3038 **municipal corporations and other governmental bodies.**

3039 If any municipal corporation or other governmental body, having legal authority by charter or other
3040 law, shall desire to supply electric public utility service, or construct, enlarge or acquire, by lease or
3041 otherwise, any electric utility facilities, outside its political boundaries, it shall have power to enter into
3042 agreements in that regard with affected public utilities which shall be binding in accordance with their
3043 terms and for the period therein provided; but no contract entered into under this section shall limit the
3044 power of the Commission to fix rates and to otherwise regulate a public utility. No such service by a
3045 municipal corporation or other governmental body shall be provided, or facilities constructed, enlarged
3046 or acquired, in territory allotted to any public utility by the Commission except in territory served by
3047 such municipal corporation or other governmental body on June 26, 1964, unless the affected public
3048 utility shall consent by such an agreement or the Commission shall grant a certificate therefor upon
3049 application by the municipal corporation or other governmental body pursuant to § 56-265.4, authority
3050 for which certification is hereby granted. Provided, however, this limitation on the extension of public
3051 utility service by any municipal corporation or governmental body outside its political boundaries shall
3052 not be applicable to cities or towns extending their service in accordance with the provisions of
3053 § 56-265.4:2. No public utility shall extend its electric public utility service, or construct, enlarge or
3054 acquire, by lease or otherwise, any electric utility facilities, in territory served exclusively by a
3055 municipal corporation or other governmental body on June 26, 1964, unless such municipal corporation
3056 or other governmental body shall consent by such an agreement. In case of question as to the scope of
3057 the territory served by a municipal corporation or other governmental body on June 26, 1964, the
3058 Commission may, and on application by either such public utility or such municipal corporation or other
3059 governmental body shall, decide such question and allot such territory accordingly, between such public
3060 utility and such municipal corporation or other governmental body, in which event any expansion of
3061 service outside the territory so allotted shall be subject to the applicable provisions of this chapter;
3062 provided, however, that nothing contained herein shall prevent any municipal corporation from
3063 constructing or maintaining facilities in county areas for the purpose of generating or purchasing
3064 electricity to be transmitted into the service area of such municipal corporation.

3065 **§ 56-265.4:2. Extension of service by cities and towns into annexed areas.**

3066 A. Any city or town in the Commonwealth ~~which~~ *that* provides electric ~~utility~~ *transmission or*
3067 *distribution* service for the use of its residents may, at any time following annexation of additional
3068 territory to such city or town, acquire the *electric distribution utility* system facilities of the electric
3069 *distribution* utility serving the annexed area in the manner provided by Title 25.1. As used in this
3070 section, (i) the term "*electric distribution utility* system facilities" shall be deemed to include all facilities
3071 necessary to ~~distribute~~ *provide* electric ~~utility~~ *distribution* service to any annexed area but shall not
3072 include substations of the public utility whose facilities are being acquired, and (ii) the terms "city" and

"town" shall not include a shire, a borough or any other subdivision of a city or town. This section shall not apply to the addition of territory to a city or town by consolidation, merger, or through any other procedure that results in an effective combination with another governmental entity.

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

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

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

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

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

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

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

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

which case the utility shall maintain the pole in accordance with prudent utility standards, provided that the cable operator shall continue to pay its pole attachment fees and otherwise comply with its contractual obligations pursuant to the applicable pole attachment agreement. In all cases, the cable operator shall be responsible for all costs related to the relocation or maintenance of its facilities.

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

§ 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 meet its obligation to provide electric generation service for use by its retail customers over the planning period.

CHAPTER 29.

VIRGINIA RETAIL ELECTRICITY CHOICE ACT.

§ 56-614. Definitions.

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

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

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

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

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

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

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

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

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

"Electric transmission utility" means any person that (i) transmits electricity, except to interconnect an electric generation facility to the transmission or distribution network, in the Commonwealth; (ii) is a

3196 corporation, cooperative, or municipal electric authority; and (iii) does not sell electricity to retail
3197 customers.

3198 "Generate," "generating," or "generation of" electricity means the production of electricity.

3199 "Incumbent electric utility" means any person that, prior to January 1, 2019, generated, transmitted,
3200 or distributed electricity for use by retail customers in an exclusive service territory of the
3201 Commonwealth established by the Commission.

3202 "Independent distribution system operator" means an entity supervising the collective distribution
3203 facilities that is charged with nondiscriminatory coordination of system and market operations with the
3204 regional transmission organization, systemwide distribution planning, interconnection of distributed
3205 energy resources, and network reliability.

3206 "Installed generation capacity" means all potentially marketable electric generation capacity,
3207 including the capacity of (i) generating facilities that are connected with a transmission or distribution
3208 system, (ii) generating facilities used to generate electricity for consumption by the person owning or
3209 controlling the facility, and (iii) generating facilities that will be connected with a transmission or
3210 distribution system and operating within 12 months.

3211 "Municipal electric authority" means an electric authority created by a municipality under Chapter
3212 54 (§ 15.2-5400 et seq.) of Title 15.2.

3213 "Municipality" means a city, county, town, authority, or other political subdivision of the
3214 Commonwealth.

3215 "Person" means any individual, corporation, partnership, association, company, business, trust, joint
3216 venture, or other private legal entity, and the Commonwealth or any municipality.

3217 "Power generation company" means a person owning, controlling, or operating a facility in the
3218 Commonwealth that produces electricity for sale.

3219 "Power region" means a contiguous geographical or electrical area that is a distinct region that the
3220 Federal Energy Regulatory Commission recognizes as a regional transmission organization.

3221 "Regional transmission organization" means an entity supervising the collective transmission facilities
3222 of a power region that is charged with nondiscriminatory coordination of market transactions,
3223 systemwide transmission planning, and network reliability.

3224 "Retail customer" means any person that purchases retail electricity for its own consumption at one
3225 or more metering points or nonmetered points of delivery located in the Commonwealth.

3226 "Retail electricity" means electricity sold for ultimate consumption to a retail customer.

3227 "Retail electric provider" means a person that sells electricity to retail customers in the
3228 Commonwealth.

3229 "Supply" or "supplying" electricity means the sale of or the offer to sell electricity to a retail
3230 customer.

3231 **§ 56-615. Unbundling.**

3232 A. Not later than September 1, 2021, each incumbent electric utility shall separate from its regulated
3233 utility activities its customer energy services business activities that are otherwise also already widely
3234 available in the competitive market.

3235 B. Not later than January 1, 2022, each incumbent electric utility shall separate its business
3236 activities from one another into the following units:

- 3237 1. An electric distribution utility;
- 3238 2. An electric transmission utility;
- 3239 3. A power generation company; and
- 3240 4. A retail electric provider.

3241 An incumbent electric utility may separate its business activities into a single electric transmission
3242 and distribution utility.

3243 C. An electric utility shall accomplish the separation required by subsection B either:

- 3244 1. By the creation of separate investor-owned companies, cooperatives, or municipal electric
3245 authorities; or
- 3246 2. Through the sale of assets to a third party.

3247 D. An electric distribution utility or electric transmission utility shall not be an affiliate of any
3248 person that:

- 3249 1. Owns, controls, or operates a facility that produces electricity for sale within the same power
3250 region as the utility; or
- 3251 2. Sells electricity to retail customers within the same power region as the utility.

3252 E. An electric distribution utility may be an affiliate of an electric transmission utility.

3253 F. Each incumbent electric utility shall file with the Commission a plan to implement this section by
3254 January 10, 2021.

3255 G. The Commission shall adopt an incumbent electric utility's plan for business separation required
3256 by subsection B, adopt the plan with changes, or reject the plan and require the incumbent electric

3257 utility to file a new plan.

3258 H. Transactions by incumbent electric utilities involving sales, transfers, or other disposition of
3259 assets to accomplish the purposes of this section are not subject to Chapter 5 (§ 56-88 et seq.).

3260 **§ 56-616. Customer safeguards.**

3261 A. By June 30, 2021, the Commission shall ensure that retail customer protections are established
3262 that entitle a retail customer:

3263 1. To safe, reliable, and reasonably priced electricity, including protection against service
3264 disconnections in an extreme weather emergency as provided by subsection G or in cases of medical
3265 emergency or nonpayment for unrelated services;

3266 2. To privacy of customer consumption and credit information;

3267 3. To bills presented in a clear format and in language readily understandable by customers;

3268 4. To have all electric services on a single bill;

3269 5. To protection from discrimination on the basis of race, color, sex, nationality, religion, income, or
3270 marital status;

3271 6. To accuracy of metering and billing;

3272 7. To information in English and Spanish and any other language as necessary concerning rates, key
3273 terms, and conditions, in a standard format that will permit comparisons between price and service
3274 offerings;

3275 8. To information in English and Spanish and any other language as necessary concerning
3276 low-income assistance programs and deferred payment plans; and

3277 9. To other information or protections necessary to ensure high-quality service to customers.

3278 B. A customer is entitled:

3279 1. To be informed about rights and opportunities in the transition to a competitive electric industry;

3280 2. To choose the customer's retail electric provider consistent with this chapter, to have that choice
3281 honored, and to assume that the customer's chosen provider will not be changed without the customer's
3282 informed consent;

3283 3. To have access to providers of energy efficiency services, to on-site distributed generation, and to
3284 providers of energy generated by renewable energy resources;

3285 4. To be served by a provider of last resort that offers a Commission-approved standard service
3286 package tied to the wholesale market prices and conditions in place at the time;

3287 5. To receive sufficient information to make an informed choice of retail electric provider;

3288 6. To be protected from unfair, misleading, or deceptive practices, including protection from being
3289 billed for services that were not authorized or provided; and

3290 7. To have an impartial and prompt resolution of disputes with its chosen retail electric provider.

3291 C. A retail electric provider or aggregator may not refuse to provide retail electric service or
3292 otherwise discriminate in the provision of electric service to any customer because of race, creed, color,
3293 national origin, ancestry, sex, marital status, income, disability, or familial status. A retail electric
3294 provider or aggregator may not refuse to provide retail electric service to a customer because the
3295 customer is located in an economically distressed geographic area or qualifies for low-income
3296 affordability or energy efficiency services based on federal and state eligibility guidelines for low-income
3297 weatherization assistance programs. The Commission shall require a provider to comply with this
3298 subsection as a condition of certification or registration.

3299 D. A retail electric provider or aggregator shall submit reports to the Commission annually and on
3300 request relating to the person's compliance with this section. The Commission by rule shall specify the
3301 form in which a report must be submitted. A report shall include:

3302 1. Information regarding the extent of the person's coverage;

3303 2. Information regarding the service provided, compiled by zip code and census tract; and

3304 3. Any other information the Commission considers relevant to determine compliance.

3305 E. The Commission may adopt and enforce such rules as may be necessary or appropriate to carry
3306 out subsections A through D, including rules for minimum service standards for a retail electric
3307 provider relating to customer deposits and the extension of credit, switching fees, leveled billing
3308 programs, interconnection and use of on-site generation, termination of service, and quality of service.
3309 The Commission has jurisdiction over retail electric providers and aggregators in enforcing subsections
3310 A through D and may assess civil and administrative penalties under Chapter 3 (§ 12.1-12 et seq.) of
3311 Title 12.1.

3312 F. By June 30, 2021, the Commission shall modify its current rules regarding customer protections
3313 to ensure that at least the same level of customer protection against potential abuses and the same
3314 quality of service that exists on December 31, 2019, is maintained in a restructured electric industry.

3315 G. A retail electric provider may not disconnect service to a residential customer during an extreme
3316 weather emergency, between the hours of 10:00 p.m. and 8:00 a.m., or on a weekend day. The entity
3317 providing service shall defer collection of the full payment of bills that are due during an extreme
3318 weather emergency until after the emergency is over and shall work with customers to establish a pay

schedule for deferred bills. For purposes of this subsection, "extreme weather emergency" means a period when:

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

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

§ 56-617. Retail electricity customer choice.

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

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

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

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

§ 56-619. Customer choice pilot projects.

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

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

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

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

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

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

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

§ 56-620. Limitation on sale of electricity.

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

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

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

§ 56-621. Provider of last resort.

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

B. A provider of last resort:

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

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

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

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

E. The Commission shall determine the procedures and criteria, which may include the solicitation of bids, for designating a provider or providers of last resort. The Commission may redesignate the provider of last resort according to a schedule it considers appropriate.

F. If no retail electric provider applies to be the provider of last resort for a given area of the Commonwealth on reasonable terms and conditions, the Commission may require a retail electric

3380 provider to become the provider of last resort as a condition of receiving or maintaining a certificate
3381 under § 56-633.

3382 G. If a retail electric provider fails to serve any or all of its customers, the provider of last resort
3383 shall offer that customer the retail service required under subsection B for that customer class with no
3384 interruption of service to any customer.

3385 **§ 56-622. Metering and billing services.**

3386 A. On introduction of customer choice in a region served by an incumbent electric utility, metering
3387 services for the area shall continue to be provided by the incumbent electric utility or the electric
3388 distribution utility separated from the incumbent electric utility in that area.

3389 B. Metering and billing services provided to residential customers shall be governed by the customer
3390 safeguards adopted by the Commission under § 56-616. All meter data, historical load data, and other
3391 proprietary customer information, including all data generated, provided, or otherwise made available
3392 by advanced meters and meter information networks, shall belong to the customer, but such data shall
3393 be used to calculate charges for service and for normal utility operations, including forecasting future
3394 load. A customer may authorize its data to be provided to one or more retail electric providers and to
3395 other persons under rules and charges established by the Commission.

3396 C. Beginning on the date of introduction of customer choice in a region served by an incumbent
3397 electric utility, the electric distribution utility providing the customer's energy requirements shall bill a
3398 customer's retail electric provider for non-bypassable delivery charges as determined under § 56-628.
3399 The retail electric provider shall pay these charges.

3400 D. An electric distribution utility shall deploy advanced metering and meter information networks for
3401 all of its residential customers and nonresidential customers within three years after the start date of
3402 customer choice in the area where the customer is served.

3403 E. The Commission shall establish a non-bypassable surcharge for an electric distribution utility to
3404 use to recover reasonable and necessary costs incurred in deploying advanced metering and meter
3405 information networks to residential customers and nonresidential customers. The expenses shall be
3406 allocated to the customer classes receiving the services.

3407 **§ 56-623. Notice of expiration and price change.**

3408 A. As used in this section, "fixed rate product" means a retail electric provider product with a term
3409 of at least three months for which the price for each billing period, including recurring charges, does
3410 not change throughout the term of the contract, except that the price may vary to reflect actual changes
3411 in electric distribution utility charges, changes to the independent distribution system operator rates or
3412 fees charged to loads, or changes to federal, state, or local laws that result in new or modified fees or
3413 costs that are not within the retail electric provider's control.

3414 B. A retail electric provider shall provide a residential customer who has a fixed rate product with
3415 at least one written notice of the date the fixed rate product will expire. The notice shall:

3416 1. Be sent to the customer's billing address by mail at least 30, but not more than 60, days
3417 preceding the date the contract will expire;

3418 2. Be sent to the customer's email address, if available to the provider and if the customer has
3419 agreed to receive notices electronically, at least 30 days but not more than 60 days preceding the date
3420 the contract will expire;

3421 3. Include, on the outside of the envelope in which the notice is sent, a statement that reads:
3422 "Contract Expiration Notice. See Enclosed.";

3423 4. If included with a customer's bill, be printed on a separate page; and

3424 5. Include a description of any fees or charges associated with the early termination of the
3425 customer's fixed rate product.

3426 C. A retail electric provider shall include on each billing statement the end date of the fixed rate
3427 product.

3428 D. No provision in this section shall be construed to prohibit the Commission from adopting rules
3429 that would provide a greater degree of customer protection.

3430 **§ 56-624. Independent distribution system operator.**

3431 A. The Commission shall establish a single independent distribution system operator by March 1,
3432 2021, to perform the following functions in the Commonwealth:

3433 1. Operate and plan the distribution systems of all electric distribution utilities;

3434 2. Ensure open access to the distribution systems for all buyers and sellers of electricity on
3435 nondiscriminatory terms;

3436 3. Transmit and calculate the extension of wholesale electricity market prices down into the
3437 distribution system by time and location to account for any distribution constraints and line losses in
3438 moving electricity through the distribution system to end-use customers;

3439 4. Track the location, capacity, and operating output of distributed electricity resources, including
3440 small-scale generation, demand response, and energy storage, that are within the distribution system.
3441 The independent distribution system operator shall aggregate these values up to the nearest interface

between the distribution system and the transmission system operated by a regional transmission organization;

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

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

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

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

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

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

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

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

1. Sells electricity;

2. Transmits or distributes electricity; or

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

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

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

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

F. The Commission may:

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

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

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

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

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

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

I. The Commission shall select the members of the operator's governing body. The governing body shall be composed of (i) the chief executive officer of the independent distribution system operator as an

3503 *ex officio voting member and (ii) six members unaffiliated with any market segment and without any*
3504 *direct financial interest in any market segment. After the initial governing members are selected, the*
3505 *governing body members shall serve three-year terms. The Commission may stagger the terms of the*
3506 *initial governing body members, up to a maximum term of five years. The governing body shall adopt*
3507 *bylaws, which shall become effective upon Commission approval.*

3508 *J. After the independent distribution system operator obtains approval from the Commission, each*
3509 *electric distribution utility shall join the certified independent distribution system operator not later than*
3510 *90 days after it receives notification of the Commission's action and shall transfer the management and*
3511 *control of its distribution system assets to the operator on the date specified in the Commission's order.*

3512 *K. A retail electric provider, distributed generator, or electric distribution utility shall observe all*
3513 *scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures*
3514 *established by the independent distribution system operator. Failure to comply with this subsection may*
3515 *result in:*

3516 *1. The revocation, suspension, or amendment of a certificate as provided by § 56-265.6 or 56-635;*
3517 *and*

3518 *2. The imposition of a penalty as provided by § 56-265.6 or 56-636.*

3519 **§ 56-625. Commission assessment of market power.**

3520 *A. Each person that owns generation facilities and offers electricity for sale in the Commonwealth*
3521 *shall report to the Commission its installed generation capacity, the total amount of capacity available*
3522 *for sale to others, the total amount of capacity under contract to others, the total amount of capacity*
3523 *dedicated to its own use, its annual wholesale power sales in the Commonwealth, its annual retail*
3524 *power sales in the Commonwealth, and any other information necessary for the Commission to assess*
3525 *market power or the development of a competitive retail market in the Commonwealth. The Commission*
3526 *shall by rule prescribe the nature and detail of the reporting requirements and shall administer those*
3527 *reporting requirements in a manner that ensures the confidentiality of competitively sensitive*
3528 *information.*

3529 *B. The independent distribution system operator shall submit an annual report to the Commission*
3530 *identifying existing and potential transmission and distribution constraints and system needs within the*
3531 *Commonwealth, alternatives for meeting system needs, and recommendations for meeting system needs.*
3532 *The first report shall be submitted on or before September 1, 2022. Subsequent reports shall be*
3533 *submitted by January 15 of each year thereafter or as determined necessary by the Commission.*

3534 **§ 56-626. Commission authority to address market power.**

3535 *A. The Commission shall monitor market power associated with the transmission, distribution, and*
3536 *sale of electricity in the Commonwealth. On a finding that market power abuses or other violations of*
3537 *this section are occurring, the Commission shall require reasonable mitigation of the market power by*
3538 *ordering the construction of additional transmission or distribution facilities, by seeking an injunction or*
3539 *penalties as necessary to eliminate or to remedy the market power abuse or violation, by ordering the*
3540 *disgorgement of excess revenue, or by suspending, revoking, or amending a certificate or registration as*
3541 *authorized by § 56-265.6 or 56-635. For purposes of this chapter, market power abuses are practices by*
3542 *persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict,*
3543 *impair, or reduce the level of competition, including practices that tie unregulated products or services*
3544 *to regulated products or services or unreasonably discriminate in the provision of regulated services.*
3545 *For purposes of this section, "market power abuses" include predatory pricing, withholding of*
3546 *production, precluding entry, and collusion. The possession of a high market share in a market open to*
3547 *competition may not, of itself, be deemed to be an abuse of market power; however, this subsection*
3548 *shall not affect the application of state and federal antitrust laws.*

3549 *B. Following review of the annual report submitted to it under subsection B of § 56-625, the*
3550 *Commission shall determine whether specific transmission or distribution constraints or bottlenecks*
3551 *within the Commonwealth give rise to market power in specific geographic markets in the*
3552 *Commonwealth. The Commission, on a finding that specific transmission or distribution constraints or*
3553 *bottlenecks within the Commonwealth give rise to market power, may order reasonable mitigation of*
3554 *that potential market power by ordering one or more electric distribution utilities, electric transmission*
3555 *and distribution utilities, or electric transmission utilities to construct additional transmission or*
3556 *distribution capacity, or both, subject to the certification provisions of this title.*

3557 **§ 56-627. No immunity from antitrust laws.**

3558 *Nothing in this chapter shall be construed to confer immunity from state or federal antitrust laws.*
3559 *This chapter is intended to complement other state and federal antitrust provisions. Therefore, antitrust*
3560 *remedies may also be sought in state or federal court to remedy anticompetitive activities.*

3561 **§ 56-628. Cost of service tariffs and charges.**

3562 *A. For purposes of this section, "electric utility" means an electric distribution utility, electric*
3563 *transmission utility, or electric transmission and distribution utility.*

3564 *B. The independent distribution system operator shall, on or before July 1, 2020, file with the*

Commission a proposed generic utility rate design and proposed generic utility customer classes. The Commission shall, on or before October 1, 2020, establish:

1. A generic utility rate design for all electric utilities in the Commonwealth; and

2. Generic electric utility customer classes for the Commonwealth.

C. Each electric utility shall, on or before January 1, 2021, file proposed tariffs for its proposed utility for open-access distribution service. The filing under this subsection shall include supporting cost data for determination of non-bypassable delivery charges, which shall be the sum of:

1. Electric utility charges by customer class based on a forecasted 2022 test year and the generic customer classes and generic rate design established by the Commission pursuant to this section; and

2. A system benefit fund fee.

D. Each electric utility shall also identify the unbundled generation and retail energy service costs by customer class.

E. Each electric utility shall include in its filing under subsection C terms and conditions for open-access distribution service, based on the standard terms and conditions established by the Commission.

F. In accordance with a schedule and procedures it establishes, the Commission shall hold a hearing and approve or modify and make effective as of January 1, 2022, the electric utility's proposed tariffs for electric utility services and the system benefit fund fee.

G. The rates established under this section shall reflect the following principles:

1. The rates shall afford the utility a reasonable opportunity to recover its reasonable costs and a reasonable rate of return;

2. The rates shall fairly allocate the utility's costs among customers; and

3. The rates shall provide an appropriate price signal to customers with respect to renewable energy.

H. The system benefit fund fee shall be that established by the Commission under § 56-639.

§ 56-629. Price to beat.

A. As used in this section:

"Incumbent retail electric provider" means a retail electric provider separated from an incumbent electric utility pursuant to § 56-615.

"Small commercial retail electric customer" means a commercial retail electric customer having a peak demand of 1,000 kilowatts or less.

B. From January 1, 2022, until January 1, 2027, an incumbent retail electric provider shall make available to residential and small commercial retail electric customers in the service area of the incumbent electric utility from which it separated under § 56-615 utility rates that, on a bundled basis, are six percent less than the incumbent electric utility's corresponding average residential and small commercial retail electric rates, on a bundled basis, that were in effect on January 1, 2019, adjusted to reflect the wholesale power cost basis determined as provided by subsection C. These rates on a bundled basis shall be known as the "price to beat" for residential and small commercial retail electric customers.

C. The Commission shall determine the wholesale power cost basis for each incumbent electric utility as of December 31, 2021.

D. An incumbent retail electric provider shall make public its price to beat in a manner that provides adequate disclosure as determined by the Commission.

E. The incumbent retail electric provider may not charge rates for residential or small commercial retail electric customers that are different from the price to beat until the earlier of 36 months after the date customer choice is introduced or:

1. For service to residential retail electric customers, the date the Commission determines that 40 percent or more of the electric power consumed by residential retail electric customers within the incumbent electric utility's certificated service area before the onset of customer choice is committed to be served by retail electric providers that were not separated from the incumbent electric utility pursuant to § 56-615; or

2. For service to small commercial retail electric customers, the date the Commission determines that 40 percent or more of the electric power consumed by small commercial retail electric customers within the incumbent electric utility's certificated service area before the onset of customer choice is committed to be served by retail electric providers that were not separated from the incumbent electric utility pursuant to § 56-615.

F. Notwithstanding subsection E, the incumbent retail electric provider may charge rates that are different from the price to beat for service to aggregated loads of nonresidential retail electric customers having an aggregated peak demand greater than 1,000 kilowatts, provided that all affected customers are:

1. Commonly owned; or

2. Franchisees of the same franchisor.

3626 *G. The incumbent retail electric provider may not encourage or provide an incentive to a customer*
3627 *to switch to any other retail electric provider, promote any other retail electric provider, or exchange*
3628 *customers with any other retail electric provider to comply with the requirements of subdivision E 1 or*
3629 *2.*

3630 *H. The following standards shall be used for measuring electric power consumption during the*
3631 *period before the onset of customer choice:*

3632 *1. The consumption of residential and small commercial retail electric customers with an annual*
3633 *peak demand less than or equal to 20 kilowatts shall be based on the average annual consumption of*
3634 *those respective groups during the year 2020;*

3635 *2. Consumption for all small commercial retail electric customers with an annual peak demand*
3636 *larger than 20 kilowatts shall be based on each customer's usage during the year 2020; and*

3637 *3. For purposes of determining whether an incumbent retail electric provider has met the*
3638 *requirements of subdivision E 2, the aggregated loads of nonresidential retail electric customers having*
3639 *a peak demand greater than 1,000 kilowatts that are served by the incumbent retail electric provider at*
3640 *a rate different from the price to beat under subsection F shall be deducted from the electric power*
3641 *consumption of small commercial customers during the period before the onset of customer choice.*

3642 *1. For purposes of subdivision H 2, if less than 12 months of consumption history exists for any such*
3643 *customer, the usage history shall be supplemented with the prior history of that customer's location. For*
3644 *service to a new location, the annual consumption shall be determined as the incumbent electric utility's*
3645 *estimate of the maximum annual kilowatt demand used in sizing the electric service to that customer*
3646 *multiplied by 8,760 hours, and that product multiplied by the average annual customer load factor for*
3647 *small commercial retail electric customers with loads greater than 20 kilowatts for the year 2020.*

3648 *J. On determining that it has met the requirements of subdivision E 1 or 2, an incumbent retail*
3649 *electric provider shall make a filing with the Commission attesting to the fact that those requirements*
3650 *have been met and that the restrictions of subdivision E 1 or 2 are no longer applicable. The*
3651 *Commission shall adopt appropriate procedures to enable it to accept or reject the filing within 30*
3652 *days.*

3653 *K. On finding that an incumbent retail electric provider will be unable to maintain its financial*
3654 *integrity if it complies with subsection B, the Commission shall set the incumbent retail electric*
3655 *provider's price to beat at the minimum level that will allow the incumbent retail electric provider to*
3656 *maintain its financial integrity. However, in no event shall the price to beat exceed the level of rates, on*
3657 *a bundled basis, charged by the incumbent electric utility on September 1, 2019, adjusted for wholesale*
3658 *cost basis as provided by subsection C.*

3659 ***§ 56-630. Regulation of transmission; independent transmission system organization.***

3660 *A. The Commission shall continue to regulate pursuant to this title electric transmission utility*
3661 *service, to the extent not prohibited by federal law.*

3662 *B. Each electric transmission utility shall join or establish an independent transmission system*
3663 *organization or regional transmission operator that has been approved by the Federal Energy*
3664 *Regulatory Commission to which such utility shall transfer the management and control of its*
3665 *transmission assets, subject to the following:*

3666 *1. No electric transmission utility shall transfer to any person any ownership or control of, or any*
3667 *responsibility to operate, any portion of any transmission system located in the Commonwealth without*
3668 *obtaining, following notice and hearing, the prior approval of the Commission, as provided in this*
3669 *section.*

3670 *2. The Commission shall have rules and regulations under which any electric transmission utility*
3671 *may transfer all or part of its control, ownership, or responsibility to an independent transmission*
3672 *system organization upon such terms and conditions that the Commission determines will:*

3673 *a. Promote:*

3674 *(1) Practices for the reliable planning, operating, maintaining, and upgrading of the transmission*
3675 *systems and any necessary additions to it;*

3676 *(2) Vibrant competition in the sale of electricity at wholesale; and*

3677 *(3) Policies for the pricing and access for service over such systems that are safe, reliable, efficient,*
3678 *not unduly discriminatory, and consistent with the orderly development of competition in the*
3679 *Commonwealth;*

3680 *b. Be consistent with lawful requirements of the Federal Energy Regulatory Commission;*

3681 *c. Be achieved on terms that fairly compensate the transferor for the rights that are transferred; and*

3682 *d. Generally promote the public interest, and are consistent with (i) ensuring that consumers' needs*
3683 *for economic and reliable transmission are met and (ii) meeting the transmission needs of electric*
3684 *generation suppliers both within and without the Commonwealth, including those that do not own,*
3685 *operate, control, or have an entitlement to transmission capacity.*

3686 *C. The Commission shall adopt rules and regulations, with appropriate public input, establishing*
3687 *elements of independent transmission system organization structures essential to the public interest,*

which elements shall be applied by the Commission in determining whether to authorize transfer of ownership or control from an electric transmission utility to an independent transmission system organization or regional transmission organization.

D. The Commission shall, to the fullest extent permitted under federal law, participate in any and all proceedings before the Federal Energy Regulatory Commission concerning independent transmission system organizations furnishing transmission services within the Commonwealth. Such participation may include such intervention as is permitted state utility regulators under Federal Energy Regulatory Commission rules and procedures.

E. Nothing in this section shall be deemed to abrogate or modify:

1. The Commission's authority over transmission line or facility construction, enlargement, or acquisition within the Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1 et seq.);

2. The laws of the Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10; or

3. The Commission's authority over retail electricity sold to retail customers within the Commonwealth as set forth in this title.

F. For purposes of this section, transmission capacity shall not include capacity that is primarily operated in a distribution function, as determined by the Commission, taking into consideration any binding federal precedents.

G. Any request to the Commission for approval of such transfer of ownership or control of or responsibility for transmission facilities shall include a study of the comparative costs and benefits thereof, which study shall analyze the economic effects of the transfer on consumers, including the effects of transmission congestion costs. The Commission may approve such a transfer if it finds, after notice and hearing, that the transfer satisfies the conditions contained in this section.

§ 56-631. Open access distribution service.

A. On or after January 1, 2022, and during any pilot project conducted under § 56-619, an electric distribution utility shall provide distribution service at retail to each retail electric provider at rates, terms of access, and conditions that are comparable to those that apply to other retail electric providers.

B. Each power region shall have generally applicable distribution tariffs approved by the Commission that guarantee open and nondiscriminatory access to the electric distribution system.

§ 56-632. Tariffs for open access.

Each electric transmission utility, electric distribution utility, and electric transmission and distribution utility shall file a tariff implementing the open access rules, under § 56-631, with the Commission or the federal regulatory authority having jurisdiction over the transmission and distribution service of the utility not later than the ninetieth day before the date customer choice is offered by that utility.

§ 56-633. Certification of retail electric providers.

A. After the date of customer choice and during any pilot project conducted under § 56-619, a person, including a retail electric provider separated from an incumbent electric utility pursuant to § 56-615, may not provide retail electric service in the Commonwealth unless the person is certified by the Commission as a retail electric provider, in accordance with this section.

B. The Commission shall issue a certificate to provide retail electric service to a person applying for certification who demonstrates:

1. The financial and technical resources to provide continuous and reliable electric service to customers in the area for which the certification is sought;

2. The managerial and technical ability to supply electricity at retail in accordance with customer contracts;

3. The resources needed to meet the customer protection requirements of this chapter; and

4. Ownership or lease of an office located within the Commonwealth for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the retail electric provider's compliance with the requirements of this chapter.

C. A person applying for certification under this section shall comply with all applicable customer protection provisions, disclosure requirements, and marketing guidelines established by the Commission and by this title.

D. Notwithstanding the provisions of subdivisions B 1, 2, and 3, if a retail electric provider files with the Commission a signed and notarized affidavit from each retail customer with which it has contracted to provide one megawatt or more of capacity stating that the customer is satisfied that the retail electric provider meets the standards prescribed by subdivisions B 1, 2, and 3 and subsection C, the retail electric provider shall be certified for purposes of serving those customers only, so long as it demonstrates that it meets the requirements of subdivision B 4.

E. A retail electric provider may apply for certification any time after September 1, 2020.

3749 *F. The Commission shall use any information required in this section in a manner that ensures the*
3750 *confidentiality of competitively sensitive information.*

3751 **§ 56-634. Registration of aggregators.**

3752 *A. A person may not provide aggregation services in the Commonwealth unless the person is*
3753 *registered with the Commission as an aggregator.*

3754 *B. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.*

3755 *C. A person registering under this section shall comply with all customer protection provisions, all*
3756 *disclosure requirements, and all marketing guidelines established by the Commission and by this title.*

3757 *D. The Commission shall establish terms and conditions it determines necessary to regulate the*
3758 *reliability and integrity of aggregators in the Commonwealth by August 1, 2020.*

3759 *E. An aggregator may register any time after September 1, 2020.*

3760 *F. The Commission shall have up to 60 days to process applications for registration filed by*
3761 *aggregators.*

3762 *G. Registration is not required of a customer that is aggregating loads from its own location or*
3763 *facilities.*

3764 *H. The Commission shall work with the Virginia Economic Development Partnership to communicate*
3765 *information about opportunities for operation as aggregators to potential new aggregators, including*
3766 *small and historically underutilized businesses.*

3767 **§ 56-635. Revocation of certification.**

3768 *A. The Commission may suspend, revoke, or amend a retail electric provider's certificate upon*
3769 *finding significant violations of this title or the rules adopted under this title or of any reliability*
3770 *standard adopted by the independent distribution system operator or an independent transmission system*
3771 *organization, including the failure to observe any scheduling, operating, planning, reliability, or*
3772 *settlement protocols established by the entities. The Commission may also suspend or revoke a retail*
3773 *electric provider's certificate if the provider no longer has the financial or technical capability to*
3774 *provide continuous and reliable electric service.*

3775 *B. The Commission may suspend or revoke an aggregator's registration upon finding significant*
3776 *violations of this title or of the rules adopted under this title.*

3777 **§ 56-636. Penalties.**

3778 *In addition to the suspension, revocation, or amendment of a certification, the Commission may, by*
3779 *its order duly entered after hearing, held after due notice to the holder of any such certificate and an*
3780 *opportunity to such holder to be heard, impose penalties of up to \$10,000 per violation on (i) any retail*
3781 *electric provider found by the Commission to have violated any provision of this title or the rules*
3782 *adopted under this title or of any reliability standard adopted by the independent distribution system*
3783 *operator or an independent transmission system organization, including the failure to observe any*
3784 *scheduling, operating, planning, reliability, or settlement protocols established by the entities, or (ii) any*
3785 *aggregator found by the Commission to have committed a significant violations of this title or of the*
3786 *rules adopted under this title.*

3787 **§ 56-637. Customer education.**

3788 *On or before January 1, 2021, the independent distribution system operator shall develop and*
3789 *implement an educational program to inform customers, including low-income and non-English-speaking*
3790 *customers, about changes in the provision of electric service resulting from the opening of the retail*
3791 *electric market and the customer choice pilot program under this chapter. The educational program*
3792 *shall be neutral and nonpromotional and shall provide customers with the information necessary to*
3793 *make informed decisions relating to the source and type of electric service available for purchase, and*
3794 *other information the independent distribution system operator considers necessary. The educational*
3795 *program shall inform customers of their rights and of the protections available through the Commission.*
3796 *The educational program may not duplicate customer information efforts undertaken by retail electric*
3797 *providers or other private entities. In planning and implementing this program, the independent*
3798 *distribution system operator shall consult with the Virginia Department of Agriculture and Consumer*
3799 *Services and with customers of and providers of retail electric service. The independent distribution*
3800 *system operator may enter into contracts for professional services to carry out the customer education*
3801 *program. The independent distribution system operator shall discontinue any programs authorized by*
3802 *this section on or before January 1, 2027.*

3803 **§ 56-638. Financial assistance for low-income customers; Percentage of Income Payment Plan;**
3804 **weatherization program.**

3805 *A. As used in this section:*

3806 *"Eligible customer" means a residential customer of a retail electric provider whose household*
3807 *income is at or below 150 percent of the federal nonfarm poverty level as published for the then current*
3808 *year in the Code of Federal Regulations.*

3809 *"Participant" means an eligible customer whose application for enrollment in the PIPP has been*
3810 *accepted by the Commission and who has satisfied all other requirements for participation in the PIPP.*

"Percentage of Income Payment Plan " or "PIPP" means the program established pursuant to this section under which a level of payment responsibility to be borne by an eligible customer is specified based on a percentage of the customer's income.

"Weatherization program" means the home weatherization program implemented by the Commission pursuant to subsection H.

B. The Percentage of Income Payment Plan (PIPP or PIP Plan) is hereby created as a mandatory bill payment assistance program for low-income residential customers of utilities.

C. The PIP Plan shall be administered as follows:

1. By July 1, 2021, the Commission shall adopt rules, in cooperation with the Department of Social Services, for determining eligibility for the PIPP and establish requirements for income verification and application procedures. Applicants will be screened to determine whether the applicant's projected payments for electric service over a 12-month period exceed the criteria established in this section.

2. The Commission shall determine the amount of a monthly credit that will be applied to each participant's electric utility bill from his retail electric provider for that month. The amount of each monthly credit for a participant shall be the amount by which (i) the participant's actual monthly bill for electric service or (ii) the statewide average monthly bill amount for that month, whichever is less, exceeds an amount equal to (a) 10 percent of the participant's monthly household income if the participant's residence's primary source of space heating is electricity or (b) six percent if the participant's residence's primary source of space heating is natural gas or propane; however, in no event shall a participant's share of his monthly electric utility bill be less than \$10. The Commission shall establish the statewide average monthly bill amount for each month by averaging the bill amounts for basic service to similar households in the Commonwealth offered by retail electric providers that have demonstrated long-term financial viability.

3. Each participant shall enter into a levelized payment plan for electric service with his retail electric provider. Such plans shall be implemented by the utility so that a participant's usage and required payments are reviewed and adjusted regularly, but no more frequently than quarterly. Each participant's first payment shall be due upon acceptance of enrollment in the PIPP.

4. The Commission shall remit on a monthly basis to the appropriate retail electric provider, from such funds in the system benefit fund established pursuant to § 56-639, that portion of the participant's bill that is not the responsibility of the participant. The Commission shall adopt processes that provide for the timely payment required by this subdivision.

5. A participant is responsible to his retail electric provider for all actual charges for electric utility service in excess of the PIPP credit. Emergency or crisis assistance payments under the Home Energy Assistance Program pursuant to § 63.2-805 shall not affect the amount of any PIPP credit to which a participant is entitled.

6. The Commission may terminate a participant's eligibility for the PIPP upon notification by the utility that the participant's monthly electric utility payment is more than 45 days past due.

7. The Commission may adjust the number of PIPP participants annually, if necessary, to match the availability of funds in the system benefit fund.

8. As part of the application and screening process established under subdivision 1, the Commission shall assess whether any weatherization, energy efficiency, or demand response measures are available to the plan participant at no cost, and if so, the participant shall enroll in any such program for which he is eligible.

9. The Commission shall:

a. Develop and implement a program to educate customers about the PIPP and about their rights and responsibilities under the percentage of income component; and

b. Establish a process to contact customers in jeopardy of losing eligibility due to late payments.

10. Every 12 months, each PIPP participant shall be required to provide proof that gross monthly household income is at or below 150 percent of the federal poverty level to remain a participant. At that time, the participant shall have made up any portions of electric utility payments that the participant failed to pay over the preceding 12 months.

D. In order to ensure that implementation costs are minimized, the Commission and retail electric providers shall work together to identify cost-effective ways to transfer information electronically and to employ available protocols that will minimize their respective administrative costs as follows:

1. The Commission may require retail electric providers to provide such information on customer usage and billing and payment information as required by the Commission to implement the PIPP and to provide written notices and communications to plan participants.

2. Each retail electric provider shall file annual reports with the Commission that cumulatively summarize and update program information as required by the Commission's rules. The reports shall track implementation costs and contain such information as is necessary to evaluate the success of the PIPP.

3872 E. The Commission shall have the authority to adopt rules and regulations necessary to execute and
3873 administer the provisions of this section.

3874 F. Each retail electric provider shall be entitled to recover reasonable administrative and
3875 operational costs incurred to comply with this section from the system benefit fund. The retail electric
3876 provider may net such costs against moneys it would otherwise remit to the fund, and each retail
3877 electric provider shall include in the annual report required under subdivision D 2 an accounting for
3878 the funds collected.

3879 G. The PIPP shall be implemented in coordination with the Department of Social Services'
3880 administration of the Home Energy Assistance Program pursuant to § 63.2-805.

3881 H. The Commission shall establish and implement a weatherization program for participants. The
3882 weatherization program shall be structured in a manner that seeks to reduce the cost of space heating
3883 and cooling in participants' residences by improving their energy efficiency. Priority shall be given to
3884 participants who are 60 years of age or older, those with disabilities, those with children in the home,
3885 households with a high energy usage or burden, and those who have received assistance any time
3886 during the last 12 months under Supplemental Security Income, Temporary Assistance for Needy
3887 Families, or Home Energy Assistance programs. The weatherization program shall provide participants
3888 with a home energy inspection to determine the most cost-effective energy efficiency improvements for
3889 the home, which improvements may include any one or more of the following:

- 3890 1. Safety inspection, tune-up and repair, and if necessary, installation of heating units;
- 3891 2. Insulation of attics;
- 3892 3. Insulation of sidewalls;
- 3893 4. Insulation of heating ducts;
- 3894 5. Insulation of floors;
- 3895 6. Insulation of water tanks;
- 3896 7. Reduction of air leakage from major sources;
- 3897 8. Personalized energy management plans; and
- 3898 9. Information on ways to manage day-to-day energy use.

3899 The Commission shall coordinate implementation of the weatherization program with the
3900 weatherization assistance program administered by the Department of Housing and Community
3901 Development pursuant to subdivision 21 of § 36-139. The costs of the weatherization program shall be
3902 provided from the system benefit fund established pursuant to § 56-639. The Commission may adjust the
3903 number of weatherization program participants annually, if necessary, to match the availability of funds
3904 in the system benefit fund.

3905 **§ 56-639. System benefit fund.**

3906 There is hereby created in the state treasury a special nonreverting fund to be known as the System
3907 Benefit Fund, referred to in this section as "the Fund." The Fund shall be established on the books of
3908 the Comptroller. All non-bypassable fees shall be paid into the state treasury and credited to the Fund.
3909 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys
3910 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the
3911 general fund but shall remain in the Fund. Expenditures and disbursements from the Fund shall be
3912 made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the
3913 independent distribution system operator. Money in the account may be used only for the purposes
3914 provided by this section. Interest earned on the system benefit fund shall be credited to the fund.

3915 B. The system benefit fund is financed by a non-bypassable fee set by the Commission. The system
3916 benefit fund fee is allocated to retail electric customers based on the amount of kilowatt hours used.

3917 C. The Commission shall annually review and approve system benefit fund accounts, projected
3918 revenue requirements, and proposed non-bypassable fees.

3919 D. Money in the system benefit fund may be used to provide funding solely for the following
3920 purposes:

- 3921 1. Customer education programs authorized by § 56-637.
- 3922 2. The Percentage of Income Payment Plan and weatherization programs authorized by § 56-638.
- 3923 3. Energy efficiency programs authorized by § 56-640.

3924 **§ 56-640. Energy efficiency resource standard.**

3925 A. As used in this section:

3926 "Cost-effective energy efficiency potential" means the energy efficiency program potential that is
3927 cost-effective using methodologies consistent with the National Standard Practice Manual developed by
3928 the National Efficiency Screening Project. The costs and benefits used to determine the cost-effective
3929 potential shall consist of (i) the costs and benefits to the utility system and (ii) the costs and benefits to
3930 energy efficiency program participants.

3931 "Energy efficiency program" means a program that reduces the total amount of electricity that is
3932 required for the same process or activity. Energy efficiency programs include equipment, physical, or
3933 program changes designed to produce measured and verified reductions in the amount of electricity

required to perform the same function and produce the same or a similar outcome. Energy efficiency programs may include (i) programs that result in improvements in lighting design; heating, ventilation, and air conditioning systems; appliances; building envelopes; and industrial and commercial processes; (ii) measures, such as the installation of advanced meters, implemented or installed by electric distribution utilities, that reduce fuel use or losses of electricity and otherwise improve internal operating efficiency in generation, transmission, and distribution systems; and (iii) customer engagement programs that result in measurable and verifiable energy savings that lead to efficient use patterns and practices. "Energy efficiency programs" include demand response, combined heat and power and waste heat recovery, curtailment, or other programs that are designed to reduce electricity consumption so long as they reduce the total amount of electricity that is required for the same process or activity.

"Measured and verified" means a process determined pursuant to methods accepted for use to measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the U.S. Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

"Utility system" means, notwithstanding any other provision of this title, the generation, transmission, and distribution facilities and services used to provide retail electricity service in an electric distribution utility system service area.

B. The independent distribution system operator shall by April 1, 2023, identify the achievable cost-effective energy efficiency potential for each electric distribution utility service area in the Commonwealth. At least every three years thereafter, the independent distribution system operator shall update this assessment for the subsequent 10-year period. The Commission shall ensure that any standard for achievable cost-effective energy efficiency potential does not compromise beneficial electrification.

C. If the independent distribution system operator determines that an electric distribution utility service area has achievable cost-effective energy efficiency potential, the operator shall issue a solicitation for bids from persons to develop and implement energy efficiency programs that achieve this potential.

D. The independent distribution system operator shall select from a separate annual bidding process a third-party auditor to evaluate randomly selected energy efficiency programs, including their actual energy savings and costs.

E. The funds to support the energy efficiency programs authorized by this section in an electric distribution utility service area would be obtained through a non-bypassable system benefit fund fee assessed by the electric distribution utility pursuant to § 56-628.

§ 56-641. Interconnection of distributed electricity generation.

A. As used in this section:

"Distributed electricity generation" means electric generation with a capacity of not more than 2,000 kilowatts provided by an electric generation technology that is installed on a retail electric customer's side of the meter.

"Distributed electricity generation owner" means:

1. An owner of distributed electricity generation;
2. A retail electric customer on whose side of the meter distributed electricity generation is installed and operated, regardless of whether the customer takes ownership of the distributed electricity generation; or

3. A person who by contract is assigned ownership rights to energy produced from distributed electricity generation located at the premises of the customer on the customer's side of the meter.

"Interconnection" means the right of a distributed electricity generation owner to physically connect distributed electricity generation to an electric distribution utility system, and the technical requirements, rules, or processes for the connection as established by the independent distribution system operator and approved by the Commission.

B. An electric distribution utility shall allow interconnection if:

1. The distributed electricity generation to be interconnected has a five-year warranty against breakdown or undue degradation; and

2. The rated capacity of the distributed electricity generation does not exceed the electric distribution utility capacity.

C. A customer may request interconnection by filing an application for interconnection with the electric distribution utility. Procedures of an electric distribution utility for the submission and processing of a customer's application for interconnection shall be consistent with rules adopted by the Commission regarding interconnection.

3995 *D. The Commission by rule shall establish safety, technical, and performance standards for*
3996 *distributed electricity generation that may be interconnected. In adopting the rules, the commission shall*
3997 *consider standards published by the Underwriters Laboratories, the National Electric Code, the National*
3998 *Electric Safety Code, and the Institute of Electrical and Electronics Engineers.*

3999 *E. An electric distribution utility or retail electric provider may not require a residential distributed*
4000 *electricity generation owner whose distributed electricity generation meets the standards established by*
4001 *rule under subsection D to purchase an amount, type, or classification of liability insurance the*
4002 *distributed electricity generation owner would not have in the absence of the distributed electricity*
4003 *generation. The Commission shall prescribe rules for liability insurance that may be required for*
4004 *nonresidential distributed electricity generation systems.*

4005 *F. An electric distribution utility shall make available to a distributed electricity generation owner*
4006 *for purposes of this section metering required for services provided under this section.*

4007 *G. A retail electric provider may contract with a distributed electricity generation owner in order*
4008 *that:*

4009 *1. Surplus electricity produced by distributed electricity generation is made available for sale to the*
4010 *retail electric provider; and*

4011 *2. The net value of that surplus electricity, valued at the energy price at the location of the*
4012 *distributed electricity generator, is credited to the distributed electricity generation owner.*

4013 *H. The distributed electricity generation owner shall sell electricity it has produced to the retail*
4014 *electric provider that serves the distributed electricity generation owner's load at a value and at other*
4015 *terms agreed to between the distributed electricity generation owner and the provider that serves the*
4016 *owner's load, which may include an agreed value based on the clearing price of energy at the time of*
4017 *day that the electricity is made available to the grid or may be a credit applied to an account during a*
4018 *billing period that may be carried over to subsequent billing periods until the credit has been redeemed.*
4019 *The independent distribution system operator established by § 56-624 shall develop procedures so that*
4020 *the amount of electricity purchased from a distributed electricity generation owner under this section is*
4021 *accounted for in settling the total load served by the provider that serves that owner's load by*
4022 *September 1, 2021. A distributed electricity generation owner requesting payment for electricity under*
4023 *this section shall have metering devices capable of providing measurements consistent with the*
4024 *independent distribution system operator's or regional transmission organization's settlement*
4025 *requirements.*

4026 *I. Neither a retail electric customer that uses distributed electricity generation nor the owner of the*
4027 *distributed electricity generation that the retail electric customer uses is an electric distribution utility,*
4028 *electric transmission utility, power generation company, or retail electric provider for the purposes of*
4029 *this title, and neither is required to register with or be certified by the Commission if at the time*
4030 *distributed electricity generation is installed, the estimated annual amount of electricity to be produced*
4031 *by the distributed electricity generation is less than or equal to the retail electric customer's estimated*
4032 *annual electricity consumption.*

4033 **§ 58.1-400.3. Minimum tax on certain electric suppliers.**

4034 *A. 1. An electric supplier, except for those organized as cooperatives and exempt from federal*
4035 *taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum*
4036 *tax imposed by this section, instead of the corporate income tax imposed by § 58.1-400 if applicable, net*
4037 *of any income tax credits that may be used to offset such tax, if the tax imposed by § 58.1-400 is less*
4038 *than the minimum tax imposed by this subsection. An electric supplier that is organized as a limited*
4039 *liability, partnership, corporation that has made an election under subchapter S of the Internal Revenue*
4040 *Code, or other entity treated as a pass-through entity shall be subject to the minimum tax in the manner*
4041 *prescribed by regulation.*

4042 *2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric*
4043 *supplier's gross receipts for the calendar year that ends during the taxable year minus the state's portion*
4044 *of the electric utility consumption tax billed to consumers.*

4045 *B. 1. An electric supplier that is organized as a cooperative and exempt from federal taxation under*
4046 *§ 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax, instead of*
4047 *the tax on modified net income imposed by § 58.1-400.2, if the tax imposed by § 58.1-400.2, net of*
4048 *any credits that may be used to offset such tax, is less than the minimum tax imposed by this*
4049 *subsection.*

4050 *2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric*
4051 *supplier's gross receipts from sales to nonmembers for the calendar year that ends during the taxable*
4052 *year minus the consumption tax collected from nonmembers.*

4053 *C. In the case of an income tax return for a period of less than 12 months, the minimum tax shall be*
4054 *based on the gross receipts for the calendar year that ends during the taxable period or, if none, the*
4055 *most recent calendar year that ended before the taxable period. The minimum tax shall be prorated by*
4056 *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

4118 hours delivered by the incumbent distribution utility and used per month as follows:

4119 1. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on
4120 all electricity consumed per month not in excess of 2,500 kWh at the rate of \$0.00155 per kWh, as
4121 follows:

4122	State consumption	Special regulatory	Local consumption
4123	tax rate	tax rate	tax rate
4124	\$0.00102/kWh	\$0.00015/kWh	\$0.00038/kWh

4125 2. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on
4126 all electricity consumed per month in excess of 2,500 kWh but not in excess of 50,000 kWh at the rate
4127 of \$0.00099 per kWh, as follows:

4128	State consumption	Special regulatory	Local consumption
4129	tax rate	tax rate	tax rate
4130	\$0.00065/kWh	\$0.00010/kWh	\$0.00024/kWh

4131 3. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on
4132 all electricity consumed per month in excess of 50,000 kWh at the rate of \$0.00075 per kWh, as
4133 follows:

4134	State consumption	Special regulatory	Local consumption
4135	tax rate	tax rate	tax rate
4136	\$0.00050/kWh	\$0.00007/kWh	\$0.00018/kWh

4137 4. The tax rates set forth in subdivisions 1, 2, and 3 are in lieu of and replace the state gross receipts
4138 tax (§ 58.1-2626), the special regulatory revenue tax (§ 58.1-2660), and the local license tax
4139 (§ 58.1-3731) levied on corporations furnishing heat, light or power by means of electricity.

4140 5. The tax on consumers under this section shall not be imposed on consumers served by an electric
4141 utility owned or operated by a municipality if such municipal electric utility elects to have an amount
4142 equivalent to the tax added on the bill such utility (or an association or agency of which it is a member)
4143 pays for bundled or unbundled transmission service as a separate item. Such amount, equivalent to the
4144 tax, shall be calculated under the tax rate schedule as if the municipal electric utility were selling and
4145 collecting the tax from its consumers, adjusted to exclude the amount which represents the local
4146 consumption tax if the locality in which a consumer is located does not impose a license fee rate
4147 pursuant to § 58.1-3731, and shall be remitted to the Commission pursuant to § 58.1-2901. Municipal
4148 electric utilities may bundle the tax in the rates charged to their retail customers. Notwithstanding
4149 anything contained herein to the contrary, the election permitted under this subdivision shall not be
4150 exercised by any municipal electric utility if the entity to whom the municipal electric utility (or an
4151 association or agency of which it is a member) pays for transmission service is not subject to the taxing
4152 jurisdiction of the Commonwealth, unless such entity agrees to remit to the Commonwealth all amounts
4153 equivalent to the tax pursuant to § 58.1-2901.

4154 6. The tax on consumers set forth in subdivisions 1, 2, and 3 shall only be imposed in accordance
4155 with this subdivision on consumers of electricity purchased from a utility consumer services cooperative
4156 to the extent that such cooperative purchases, for the purpose of resale within the Commonwealth,
4157 electricity from a federal entity that made payments in accordance with federal law (i) in lieu of taxes
4158 during such taxable period to the Commonwealth and (ii) on the basis of such federal entity's gross
4159 proceeds resulting from the sale of such electricity. Such tax shall instead be calculated by deducting
4160 from each of the respective tax amounts calculated in accordance with subdivisions 1, 2, and 3 an
4161 amount equal to the calculated tax amount multiplied by the ratio of the total cost of power supplied by
4162 the federal entity, including facilities rental, during the taxable period to the utility consumer services
4163 cooperative's total operating revenue within the Commonwealth during the taxable period. The State
4164 Corporation Commission may audit the records and books of any utility consumer services cooperative
4165 that determines the tax on consumers in accordance with this subdivision to verify that the tax imposed
4166 has been correctly determined and properly remitted.

4167 B. The tax authorized by this chapter shall not apply to municipalities' own use or to use by
4168 divisions or agencies of federal, state and local governments.

4169 C. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible
4170 customer-generators distributed electricity generation owners, as defined in ~~§ 56-594~~ § 56-641, those
4171 kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours
4172 generated and fed back to the electric grid by such customer-generators.

4173 **§ 58.1-3221.4. Classification of improvements to real property designed and used primarily for**
4174 **the manufacture of a renewable energy product for tax purposes.**

4175 Improvements to real property designed and used primarily for the purpose of manufacturing a
4176 product from renewable energy, as defined in ~~§ 56-576~~ 56-1, are hereby declared to be a separate class
4177 of property and shall constitute a classification for local taxation separate from other classifications of
4178 real property. The governing body of any county, city, or town may, by ordinance, levy a tax on the
4179 value of such improvements at a different rate from that of tax levied on other real property. The rate of

tax imposed by any county, city, or town on such improvements shall not exceed that applicable to the general class of real property.

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

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

1. a. Boats or watercraft weighing five tons or more, not used solely for business purposes;
b. Boats or watercraft weighing less than five tons, not used solely for business purposes;
2. Aircraft having a maximum passenger seating capacity of no more than 50 that are owned and operated by scheduled air carriers operating under certificates of public convenience and necessity issued by the State Corporation Commission or the Civil Aeronautics Board;

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

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

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

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

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

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

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

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

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

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

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

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

15. Motor vehicles (i) owned by members of a volunteer emergency medical services agency or a member of a volunteer fire department or (ii) leased by volunteer emergency medical services personnel or a member of a volunteer fire department if the volunteer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is owned by each volunteer member who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member, or leased by each volunteer member who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member if the volunteer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, may be specially classified under this section, provided the volunteer regularly responds to emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief of the volunteer emergency medical services agency or volunteer fire department, that the volunteer is an individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or a member of the volunteer fire department who regularly responds to calls or regularly performs other duties for the emergency medical services agency or fire department, and the motor vehicle owned or leased by the volunteer is identified. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good

cause shown and without fault on the part of the volunteer, to accept a certification after the January 31 deadline. In any county that prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may be certified and classified pursuant to this subsection when the vehicle certified as of the immediately prior January date is transferred during the tax year;

16. Motor vehicles (i) owned by auxiliary members of a volunteer emergency medical services agency or volunteer fire department or (ii) leased by auxiliary members of a volunteer emergency medical services agency or volunteer fire department if the auxiliary member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by each auxiliary volunteer fire department or emergency medical services agency member may be specially classified under this section. The auxiliary member shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief of the volunteer emergency medical services agency or volunteer fire department, that the volunteer is an auxiliary member of the volunteer emergency medical services agency or fire department who regularly performs duties for the emergency medical services agency or fire department, and the motor vehicle is identified as regularly used for such purpose; however, if a volunteer meets the definition of "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member and an auxiliary member are members of the same household, that household shall be allowed no more than two special classifications under this subdivision or subdivision 15. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the auxiliary member, to accept a certification after the January 31 deadline;

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

18. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers as defined in § 46.2-1500, which are used for recreational purposes only, and privately owned trailers as defined in § 46.2-100, which are designed and used for the transportation of horses except those trailers described in subdivision A 11 of § 58.1-3505;

19. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of, one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written statement to the commissioner of revenue or other assessing officer from the Department of Veterans Services that the veteran has been so designated or classified by the Department of Veterans Services as to meet the requirements of this section, and that his disability is service-connected. For purposes of this section, a person is blind if he meets the provisions of § 46.2-100;

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

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

22. Motor vehicles which use clean special fuels as defined in § 46.2-749.3, which shall not include any vehicle described in subdivision 38 or 40;

23. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility that is properly licensed by the federal government, the Commonwealth, or both, and that is properly zoned for such use. "Wild animals" means any animals that are found in the wild, or in a wild state, within the

boundaries of the United States, its territories or possessions. "Exotic animals" means any animals that are found in the wild, or in a wild state, and are native to a foreign country;

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

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

26. All tangible personal property employed in a trade or business other than that described in subdivisions A 1 through A 20, except for subdivision A 18, of § 58.1-3503;

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

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

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

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

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

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

33. Forest harvesting and silvicultural activity equipment;

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

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

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

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

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

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

40. Motor vehicles powered solely by electricity;

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

42. Motor vehicles leased by a county, city, town, or constitutional officer if the locality or constitutional officer is obligated by the terms of the lease to pay tangible personal property tax on the

4364 motor vehicle;

4365 43. Computer equipment and peripherals used in a data center. For purposes of this subdivision,
4366 "data center" means a facility whose primary services are the storage, management, and processing of
4367 digital data and is used to house (i) computer and network systems, including associated components
4368 such as servers, network equipment and appliances, telecommunications, and data storage systems; (ii)
4369 systems for monitoring and managing infrastructure performance; (iii) equipment used for the
4370 transformation, transmission, distribution, or management of at least one megawatt of capacity of
4371 electrical power and cooling, including substations, uninterruptible power supply systems, all electrical
4372 plant equipment, and associated air handlers; (iv) Internet-related equipment and services; (v) data
4373 communications connections; (vi) environmental controls; (vii) fire protection systems; and (viii) security
4374 systems and services;

4375 44. Motor vehicles (i) owned by persons who serve as uniformed members of the Virginia Defense
4376 Force pursuant to Article 4.2 (§ 44-54.4 et seq.) of Chapter 1 of Title 44 or (ii) leased by persons who
4377 serve as uniformed members of the Virginia Defense Force pursuant to Article 4.2 (§ 44-54.4 et seq.) of
4378 Chapter 1 of Title 44 if the person is obligated by the terms of the lease to pay tangible personal
4379 property tax on the motor vehicle. One motor vehicle that is regularly used by a uniformed member of
4380 the Virginia Defense Force to respond to his official duties may be specially classified under this
4381 section. In order to qualify for such classification, any person who applies for such classification shall
4382 identify the vehicle for which the classification is sought and shall furnish to the commissioner of the
4383 revenue or other assessing officer a certification from the Adjutant General of the Department of
4384 Military Affairs under § 44-11. That certification shall state that (a) the applicant is a uniformed member
4385 of the Virginia Defense Force who regularly uses a motor vehicle to respond to his official duties, and
4386 (b) the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose.
4387 The certification shall be submitted by January 31 of each year to the commissioner of the revenue or
4388 other assessing officer; however, the commissioner of revenue or other assessing officer shall be
4389 authorized, in his discretion, and for good cause shown and without fault on the part of the member, to
4390 accept a certification after the January 31 deadline;

4391 45. If a locality has adopted an ordinance pursuant to subsection D of § 58.1-3703, tangible personal
4392 property of a business that qualifies under such ordinance for the first two tax years in which the
4393 business is subject to tax upon its personal property pursuant to this chapter. If a locality has not
4394 adopted such ordinance, this classification shall apply to the tangible personal property for such first two
4395 tax years of a business that otherwise meets the requirements of subsection D of § 58.1-3703;

4396 46. Miscellaneous and incidental tangible personal property employed in a trade or business that is
4397 not classified as machinery and tools pursuant to Article 2 (§ 58.1-3507 et seq.), merchants' capital
4398 pursuant to Article 3 (§ 58.1-3509 et seq.), or short-term rental property pursuant to Article 3.1
4399 (§ 58.1-3510.4 et seq.), and has an original cost of less than \$500. A county, city, or town shall allow a
4400 taxpayer to provide an aggregate estimate of the total cost of all such property owned by the taxpayer
4401 that qualifies under this subdivision, in lieu of a specific, itemized list; and

4402 47. Commercial fishing vessels and property permanently attached to such vessels.

4403 B. The governing body of any county, city or town may levy a tax on the property enumerated in
4404 subsection A at different rates from the tax levied on other tangible personal property. The rates of tax
4405 and the rates of assessment shall (i) for purposes of subdivisions A 1, 2, 3, 4, 5, 6, 8, 11 through 20, 22
4406 through 24, and 26 through 47, not exceed that applicable to the general class of tangible personal
4407 property, (ii) for purposes of subdivisions A 7, 9, 21, and 25, not exceed that applicable to machinery
4408 and tools, and (iii) for purposes of subdivision A 10, equal that applicable to real property. If an item of
4409 personal property is included in multiple classifications under subsection A, then the rate of tax shall be
4410 the lowest rate assigned to such classifications.

4411 C. Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is
4412 defined in § 58.1-3523, (i) included in any separate class of property in subsection A and (ii) assessed
4413 for tangible personal property taxes by a county, city, or town receiving a payment from the
4414 Commonwealth under Chapter 35.1 (§ 58.1-3523 et seq.) for providing tangible personal property tax
4415 relief, the county, city, or town may levy the tangible personal property tax on such qualifying vehicle
4416 at a rate not to exceed the rates of tax and rates of assessment required under such chapter.

4417 **§ 58.1-3814. Water or heat, light and power companies.**

4418 A. Any county, city or town may impose a tax on the consumers of the utility service or services
4419 provided by any water or heat, light and power company or other corporations coming within the
4420 provisions of Chapter 26 (§ 58.1-2600 et seq.), which tax shall not be imposed at a rate in excess of 20
4421 percent of the monthly amount charged to consumers of the utility service and shall not be applicable to
4422 any amount so charged in excess of \$15 per month for residential customers. Any city, town or county
4423 that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to
4424 impose such a tax in excess of such limits, but no more. For taxable years beginning on and after
4425 January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be

imposed pursuant to subsections C through J only.

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

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

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

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

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

E. The tax authorized by this section shall not apply to:

1. Utility sales of products used as motor vehicle fuels; or
2. Natural gas used to generate electricity by a public utility as defined in § 56-265.1 or an electric cooperative as defined in § 56-231.15.

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

The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not exceed the limits set forth in this subsection. The provider of billing services shall bill the tax to all users who are subject to the tax and to whom it bills for electricity service, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. The current service provider shall provide to localities no later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to \$3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to kilowatt hours. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received from each class of nonresidential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of kilowatt hours used, and the amount of consumer utility tax paid in calendar year 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt hour rates for nonresidential consumers shall not apply after January 1, 2004. On or before October 31, 2000, any locality imposing a tax on consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J. Notice of such amendment shall be provided to service providers in a manner consistent with subsection B except that "registered agent of the provider of billing services" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

4487 2. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible
4488 ~~customer-generators distributed electricity generation owners~~, as defined in ~~§ 56-594~~ § 56-641, those
4489 kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours
4490 generated and fed back to the electric grid by such customer-generators.

4491 G. Until the consumer pays the tax to such provider of billing services, the tax shall constitute a debt
4492 to the locality. If any consumer receives and pays for electricity but refuses to pay the tax on the bill
4493 that is imposed by a locality, the provider of billing services shall notify the locality of the name and
4494 address of such consumer. If any consumer fails to pay a bill issued by a provider of billing services,
4495 including the tax imposed by a locality as stated thereon, the provider of billing services shall follow its
4496 normal collection procedures with respect to the charge for electric service and the tax, and upon
4497 collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge
4498 for electric service and the tax and (ii) remit the tax portion to the appropriate locality. After the
4499 consumer pays the tax to the provider of billing services, the taxes shall be deemed to be held in trust
4500 by such provider of billing services until remitted to the localities.

4501 H. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline
4502 distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to
4503 consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company
4504 or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and
4505 shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality that
4506 imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount
4507 charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers,
4508 taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i)
4509 avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues
4510 being received by localities from such tax at the time of the conversion. Current pipeline distribution
4511 companies and gas utilities shall provide to localities not later than August 1, 2000, information to
4512 enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as
4513 a result of the conversion shall be limited to \$3 per month, except any locality that imposed a higher
4514 maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential
4515 consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as
4516 converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of
4517 the conversion shall be based on the annual amount of revenue received and due from each of the
4518 nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that
4519 year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors
4520 as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and
4521 due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this
4522 section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in
4523 this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on
4524 nonresidential customers up to the amount authorized by subsection A.

4525 On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend
4526 its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of
4527 subsections C through J of this section. Notice of such amendment shall be provided to pipeline
4528 distribution companies and gas utilities in a manner consistent with subsection B except that "registered
4529 agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the
4530 utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not
4531 be effective before the first meter reading after December 31, 2000, prior to which time the tax
4532 previously imposed by the locality shall be in effect.

4533 I. Until the consumer pays the tax to such gas utility or pipeline distribution company, the tax shall
4534 constitute a debt to the locality. If any consumer receives and pays for gas but refuses to pay the tax
4535 that is imposed by the locality, the gas utility or pipeline distribution company shall notify the localities
4536 of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a gas utility
4537 or pipeline distribution company, including the tax imposed by a locality, the gas utility or pipeline
4538 distribution company shall follow its normal collection procedures with regard to the charge for the gas
4539 and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount
4540 collected between the charge for gas service and the tax and (ii) remit the tax portion to the appropriate
4541 locality. After the consumer pays the tax to the gas utility or pipeline distribution company, the taxes
4542 shall be deemed to be held in trust by such gas utility or pipeline distribution company until remitted to
4543 the localities.

4544 J. For purposes of this section:

4545 "Class of consumers" means a category of consumers served under a rate schedule established by the
4546 pipeline distribution company and approved by the State Corporation Commission.

4547 "Gas utility" has the same meaning as provided in § 56-235.8.

4548 "Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

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

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

§ 62.1-44.15:21. Impacts to wetlands.

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

B. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions and may be met through (i) wetland creation or restoration, (ii) purchase or use of mitigation bank credits pursuant to § 62.1-44.15:23, (iii) contribution to the Wetland and Stream Replacement Fund established pursuant to § 62.1-44.15:23.1 to provide compensation for impacts to wetlands, streams, or other state waters that occur in areas where neither mitigation bank credits nor credits from a Board-approved fund that have met the success criteria are available at the time of permit application, or (iv) contribution to a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions. The Board shall evaluate the appropriate compensatory mitigation option on a case-by-case basis with consideration for which option is practicable and ecologically and environmentally preferable, including, in terms of replacement of acreage and functions, which option offers the greatest likelihood of success and avoidance of temporal loss of acreage and function. This evaluation shall be consistent with the U.S. Army Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. Part 332). When utilized in conjunction with creation, restoration, or mitigation bank credits, compensation may incorporate (a) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (b) preservation of wetlands.

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

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

1. Activities causing wetland impacts of less than one-half of an acre;
2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission, except for construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, and 56-265.2:1; and 56-580 to ensure that consultation on wetland impacts occurs

4610 prior to siting determinations;

4611 3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of
4612 Mines, Minerals and Energy, and sand mining;

4613 4. Virginia Department of Transportation or other linear transportation projects; and

4614 5. Activities governed by nationwide or regional permits approved by the Board and issued by the
4615 U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be
4616 limited to, filing with the Board any copies of preconstruction notification, postconstruction report, and
4617 certificate of compliance required by the U.S. Army Corps of Engineers.

4618 E. Within 15 days of receipt of an individual permit application, the Board shall review the
4619 application for completeness and either accept the application or request additional specific information
4620 from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the
4621 permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or
4622 hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct
4623 such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of
4624 the public meeting or hearing. In addition, for an individual permit application related to an application
4625 to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity
4626 pursuant to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) for construction of any natural
4627 gas transmission pipeline greater than 36 inches inside diameter, the Board shall complete its
4628 consideration within the one-year period established under 33 U.S.C. § 1341(a).

4629 F. Within 15 days of receipt of a general permit application, the Board shall review the application
4630 for completeness and either accept the application or request additional specific information from the
4631 applicant. A determination that an application is complete shall not mean the Board will issue the permit
4632 but means only that the applicant has submitted sufficient information to process the application. The
4633 Board shall deny, approve, or approve with conditions any application for coverage under a general
4634 permit within 45 days of receipt of a complete preconstruction application. The application shall be
4635 deemed approved if the Board fails to act within 45 days.

4636 G. No Virginia Water Protection Permit shall be required for impacts to wetlands caused by activities
4637 governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 or normal agricultural activities or normal
4638 silvicultural activities. This section shall also not apply to normal residential gardening, lawn and
4639 landscape maintenance, or other similar activities that are incidental to an occupant's ongoing residential
4640 use of property and of minimal ecological impact. The Board shall develop criteria governing this
4641 exemption and shall specifically identify the activities meeting these criteria in its regulations.

4642 H. No Virginia Water Protection Permit shall be required for impacts caused by the construction or
4643 maintenance of farm or stock ponds, but other permits may be required pursuant to state and federal
4644 law. For purposes of this exclusion, farm or stock ponds shall include all ponds and impoundments that
4645 do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2
4646 (§ 10.1-604 et seq.) of Chapter 6 pursuant to normal agricultural or silvicultural activities.

4647 I. No Virginia Water Protection Permit shall be required for wetland and open water impacts to a
4648 stormwater management facility that was created on dry land for the purpose of conveying, treating, or
4649 storing stormwater, but other permits may be required pursuant to local, state, or federal law. The
4650 Department shall adopt guidance to ensure that projects claiming this exemption create no more than
4651 minimal ecological impact.

4652 J. An individual Virginia Water Protection Permit shall be required for impacts to state waters for the
4653 construction of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a
4654 certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C.
4655 § 717f(c)). For purposes of this subsection:

4656 1. Each wetland and stream crossing shall be considered as a single and complete project; however,
4657 only one individual Virginia Water Protection Permit addressing all such crossings shall be required for
4658 any such pipeline. Notwithstanding the requirement for only one such individual permit addressing all
4659 such crossings, individual review of each proposed water body crossing with an upstream drainage area
4660 of five square miles or greater shall be performed.

4661 2. All pipelines shall be constructed in a manner that minimizes temporary and permanent impacts to
4662 state waters and protects water quality to the maximum extent practicable, including by the use of
4663 applicable best management practices that the Board determines to be necessary to protect water quality.

4664 3. The Department shall assess an administrative charge to any applicant for such project to cover
4665 the direct costs of services rendered associated with its responsibilities pursuant to this subsection. This
4666 administrative charge shall be in addition to any fee assessed pursuant to § 62.1-44.15:6.

4667 **§ 67-101. Energy objectives.**

4668 The Commonwealth recognizes each of the following objectives pertaining to energy issues will
4669 advance the health, welfare, and safety of the residents of the Commonwealth:

4670 1. Ensuring an adequate energy supply and a Virginia-based energy production capacity;

4671 2. Minimizing the Commonwealth's long-term exposure to volatility and increases in world energy

prices through greater energy independence;

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

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

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

6. Using energy resources more efficiently;

7. Facilitating conservation;

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

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

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

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

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

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

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

~~Except as provided in subsection D of § 56-585.1, nothing in this section shall be deemed to abrogate or modify in any way the provisions of the Virginia Electric Utility Regulation Act (§ 56-576 et seq.).~~

§ 67-1100. Definitions.

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

"Commission" means the State Corporation Commission.

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

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

"Public highway" means, for purposes of computing the public rights-of-way use fee, the centerline mileage of highways and streets that are part of the primary state highway system as defined in § 33.2-100, the secondary state highway system as defined in §§ 33.2-100 and 33.2-324, the highways of those cities and certain towns defined in § 33.2-319, and the highways and streets maintained and operated by counties that have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that have not elected to return.

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

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

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

"Renewable generator" means a person that (i) does not have the power of a public service

4733 corporation to acquire rights-of-way, easements, or other interests in lands as provided in § 56-49 and
4734 (ii) operates a renewable energy facility.

4735 "Restrictions or requirements concerning the use of the public rights-of-way" includes permitting
4736 processes; requirements regarding notice, time and location of excavations and repair work; enforcement
4737 of the statewide building code; and inspections. Such phrase shall not include any existing franchise fee
4738 or public rights-of-way use fee.

4739 **§ 67-1206. Transmission of power from offshore wind energy projects.**

4740 A. The ~~incumbent, investor-owned~~ *electric transmission* utility for the onshore service territory
4741 adjacent to any offshore wind generation project shall, at the request of the Department of Mines,
4742 Minerals and Energy, initiate a transmission study. Such utility shall initiate the transmission study no
4743 more than 30 days following the request of the Department of Mines, Minerals and Energy, and shall
4744 report to the Department of Mines, Minerals and Energy within 180 days of the request. The
4745 Department of Mines, Minerals and Energy shall report the results of the study to the Authority. The
4746 Department of Mines, Minerals and Energy shall request the study no later than July 31, 2010.

4747 B. Upon receipt of the study, but no later than May 31, 2011, the Authority shall recommend such
4748 actions as it deems appropriate to facilitate transmission of power from offshore wind energy projects.

4749 **§ 67-1505. (Expires July 1, 2025) Powers and duties of the Authority.**

4750 In addition to such other powers and duties established under this chapter, the Authority shall have
4751 the power and duty to:

4752 1. Adopt, use, and alter at will an official seal;

4753 2. Make bylaws for the management and regulation of its affairs;

4754 3. Maintain an office at such place or places within the Commonwealth as it may designate;

4755 4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or
4756 bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes
4757 for which the Authority is created;

4758 5. Make and execute contracts and all other instruments and agreements necessary or convenient for
4759 the exercise of its powers and functions;

4760 6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial
4761 experts, investment bankers, superintendents, managers, and such other employees and agents as may be
4762 necessary and fix their compensation to be payable from funds made available to the Authority;

4763 7. Invest its funds as permitted by applicable law;

4764 8. Receive and accept from any federal or private agency, foundation, corporation, association, or
4765 person grants, donations of money, or real or personal property for the benefit of the Authority, and
4766 receive and accept from the Commonwealth or any state, and from any municipality, county, or other
4767 political subdivision thereof and any other source, aid or contributions of either money, property, or
4768 other things of value, to be held, used, and applied for the purposes for which such grants and
4769 contributions may be made;

4770 9. Enter into agreements with any department, agency, or instrumentality of the United States or of
4771 the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of
4772 planning, regulating, and providing for the financing or assisting in the financing of any project;

4773 10. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably
4774 implied;

4775 11. Identify and take steps to mitigate existing state and regulatory or administrative barriers to the
4776 development of the solar energy and energy storage industries, including facilitating any permitting
4777 processes;

4778 12. Enter into interstate partnerships to develop the solar energy industry, solar energy projects, and
4779 energy storage projects;

4780 13. Collaborate with entities, including institutions of higher education, to increase the training and
4781 development of the workforce needed by the solar and energy storage industries in the Commonwealth,
4782 including industry-recognized credentials and certifications;

4783 14. Conduct any other activities as may seem appropriate to increase solar energy generation in the
4784 Commonwealth and the associated jobs and economic development and competitiveness benefits;
4785 ~~including assisting investor-owned utilities in the planned deployment of at least 400 megawatts of solar~~
4786 ~~energy projects in the Commonwealth by 2020 through entering into agreements in its discretion in any~~
4787 ~~manner provided by law for the purpose of planning and providing for the financing or assisting in the~~
4788 ~~financing of the construction or purchase of such solar energy projects authorized pursuant to~~
4789 ~~§ 56-585.1;~~

4790 15. Promote collaborative efforts among Virginia's public and private institutions of higher education
4791 in research, development, and commercialization efforts related to energy storage;

4792 16. Monitor relevant developments in energy storage technology and deployment nationally and
4793 globally and disseminate relevant information and research results; and

4794 17. Identify and work with the Commonwealth's industries and nonprofit partners in advancing

4795 efforts related to the development and commercialization of energy storage.

4796 2. That §§ 15.2-5409, 15.2-5416, 56-1.2:1, 56-232.2:1, 56-235.1:1, 56-235.7, 56-236.1, 56-245.1:2,
4797 56-249.3, 56-249.4, and 56-249.6, Chapter 23 (§§ 56-576 through 56-596.3) of Title 56, and
4798 § 67-202.1 of the Code of Virginia are repealed.

4799 3. That Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the
4800 Acts of Assembly of 2017, are repealed.

4801 4. That any customer of an electric utility that is a participant in a program established under
4802 §§ 56-594 through 56-594.2 of the Code of Virginia prior to the effective date of this act shall have
4803 the option to continue participating in such program following the repeal of such sections by this
4804 act for the lesser of five years or the balance of the term of the customer's agreement with the
4805 electric utility under which it participates in the program. No customers shall be eligible to
4806 commence participating in such a program on or after July 1, 2020.

4807 5. That the provisions of the third enactment of this act shall not affect the validity of any third
4808 party power purchase agreement entered into prior to July 1, 2020, under a pilot project
4809 authorized pursuant to Chapters 358 and 382 of the Acts of Assembly of 2013 as amended by
4810 Chapter 803 of the Acts of Assembly of 2017.