

1 **State Corporation Commission**

2
3 ***Legislative Proposals Concerning***
4 ***The Virginia Electric Utility Restructuring Act***

5
6 **December 17, 1999**

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8
9 **I. Competitive Metering and Competitive Billing**

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12 **§ 56-581. Regulation of rates subject to Commission's jurisdiction.**

13 A. Subject to the provisions of § 56-582, the Commission shall regulate the rates
14 for the transmission of electric energy, to the extent not prohibited by federal law,
15 and for the distribution of electric energy to such retail customers on an
16 unbundled basis, but, subject to the provisions of this chapter after the date of
17 customer choice, the Commission no longer shall regulate rates and services for
18 the generation component of retail electric energy sold to retail customers.

19 ~~B. No later than September 1, 1999, and annually thereafter, the Commission~~
20 ~~shall submit a report to the General Assembly evaluating the advantages and~~
21 ~~disadvantages of competition for metering, billing and other services which have~~
22 ~~not been made subject to competition, and making recommendations as to when,~~
23 ~~and for whom, such other services should be made subject to competition.~~

24 C. B. Beginning July 1, 1999, and thereafter, no cooperative that was a member
25 of a power supply cooperative on January 1, 1999, shall be obligated to file any
26 rate rider as a consequence of an increase or decrease in the rates, other than
27 fuel costs, of its wholesale supplier, nor must any adjustment be made to such
28 cooperative's rates as a consequence thereof.

1 ~~D.C.~~ Except for the provision of default services under § 56-585 or emergency
2 services in § 56-586, nothing in this chapter shall authorize the Commission to
3 regulate the rates or charges for electric service to the Commonwealth and its
4 municipalities.

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6 **§ 56-581.1. Commission authority to make services competitive.**

7 A. The Commission may determine, after notice and an opportunity for a
8 hearing, whether (i) metering services and (ii) billing services, for which
9 competition has not been otherwise authorized by law, may be provided by
10 persons licensed to provide such services. Such determination shall be made
11 not later than January 1, 2002. The Commission's determinations under this
12 subsection as to the appropriateness of and date of commencement of
13 competition may vary by service, type of seller, region, incumbent electric utility
14 and customer group. Such determinations shall:

- 15 1. Be consistent with the goal of facilitating the development of
16 effective competition in electric service for all customer classes;
- 17 2. Take into account the readiness of customers and suppliers to buy
18 and sell such services;
- 19 3. Not jeopardize the safety, reliability or quality of electric service;
- 20 4. Consider the degree of control exerted over utility operations by
21 utility customers;
- 22 5. Not adversely affect the ability of an incumbent electric utility
23 authorized or obligated to provide electric service to customers who do not

1 buy such services from competitors to provide electric service to such
2 customers at reasonable rates; and

3 6. Give due consideration to the potential effects of such
4 determinations on utility tax collection by state and local governments in
5 the Commonwealth.

6 B. If, on or before January 1, 2002, the Commission has determined
7 that competition is not appropriate for (i) metering services, (ii) billing services, or
8 any portion of either services, the Commission shall reconsider any such
9 determinations no less frequently than on the anniversaries thereof.

10 C. Where the Commission under subsection A has made a service
11 subject to competition, an incumbent electric utility shall undertake such
12 coordination, with persons licensed to provide such service, as the Commission
13 deems reasonably necessary to the development of such competition, provided
14 that the reasonable costs of such coordination are recovered by such utility. The
15 foregoing shall apply to an affiliate of an incumbent electric utility if such affiliate
16 controls a resource which is necessary to the development of competition for
17 such service.

18 D. Any person seeking to sell, offering to sell, or selling services made
19 competitive pursuant to this section shall be subject to the licensure requirements
20 of § 56-587.

21 E. Upon a determination under subsection A of this section that a
22 service presently provided by an incumbent electric utility should be made
23 subject to competition, the Commission shall adjust the rates for any

1 noncompetitive services provided by such utility so that such rates do not reflect
2 costs associated with or properly allocable to the service made subject to
3 competition.

4 **§ 56-580. Transmission and distribution of electric energy; codes of**
5 **conduct; competitive services.**

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

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

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

18 D. The Commission may permit the construction and operation of electrical
19 generating facilities upon a finding that such generating facility and associated
20 facilities including transmission lines and equipment (i) will have no material
21 adverse effect upon reliability of electric service provided by any regulated public
22 utility and (ii) are not otherwise contrary to the public interest. In review of its
23 petition for a certificate to construct and operate a generating facility described in

1 this subsection, the Commission shall give consideration to the effect of the
2 facility and associated facilities, including transmission lines and equipment, on
3 the environment and establish such conditions as may be desirable or necessary
4 to minimize adverse environmental impact as provided in § 56-46.1.

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

13 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric
14 utility owned or operated by a municipality as of July 1, 1999, nor shall any
15 provision of this chapter apply to any such electric utility unless (i) that
16 municipality elects to have this chapter apply to that utility or (ii) that utility,
17 directly or indirectly, sells, offers to sell or seeks to sell electric energy to any
18 retail customer outside the geographic area that was served by such municipality
19 as of July 1, 1999.

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21 **§ 56-585. Default service.**

22 A. The Commission shall, after notice and opportunity for hearing, (i) determine
23 the components of default service and (ii) establish one or more programs

1 making such services available to retail customers requiring them commencing
2 with the date of customer choice for all retail customers established pursuant to §
3 56-577. For purposes of this chapter, "default service" means service made
4 available under this section to retail customers who (i) do not affirmatively select
5 a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii)
6 have contracted with an alternative supplier who fails to perform.

7 B. The Commission shall designate the providers of default service. In doing so,
8 the Commission:

9 1. Shall take into account the characteristics and qualifications of prospective
10 providers, including cost, experience, safety, reliability, corporate structure,
11 access to electric energy resources necessary to serve customers requiring such
12 services, and other factors deemed necessary to protect the public interest;

13 2. May, upon a finding that the public interest will be served, designate one or
14 more willing providers to provide one or more components of such services, in
15 one or more regions of the Commonwealth, to one or more classes of customers;
16 and

17 3. In the absence of a finding under subdivision 2, may require an incumbent
18 electric utility or distribution utility to provide one or more components of such
19 services, or to form an affiliate to do so, in one or more regions of the
20 Commonwealth, at rates which are fairly compensatory to the utility and which
21 reflect any cost of energy prudently procured, including energy procured from the
22 competitive market; however, the Commission may not require an incumbent

1 electric utility or distribution utility, or affiliate thereof, to provide any such
2 services outside the territory in which such utility provides service.

3 C. The Commission shall, after notice and opportunity for hearing, determine the
4 rates, terms and conditions for such services consistent with the provisions of
5 subdivision B 3 and Chapter 10 (§ 56-232 et seq.) of this title and shall establish
6 such requirements for providers and customers as it finds necessary to promote
7 the reliable and economic provision of such services and to prevent the inefficient
8 use of such services. The Commission may use any rate method that promotes
9 the public interest and may establish different rates, terms and conditions for
10 different classes of customers.

11 D. On or before July 1, 2004, and annually thereafter, the Commission shall
12 determine, after notice and opportunity for hearing, whether there is a sufficient
13 degree of competition such that the elimination of default service for particular
14 customers, particular classes of customers or particular geographic areas of the
15 Commonwealth will not be contrary to the public interest. The Commission shall
16 report its findings and recommendations concerning modification or termination
17 of default service to the General Assembly and to
18 the Legislative Transition Task Force, not later than December 1, 2004, and
19 annually thereafter.

20 E. A distribution electric cooperative, or one or more affiliates thereof, shall have
21 the obligation and right to be the supplier of default services in its certificated
22 service territory. Such default services, for the purposes of this subsection, shall
23 include the supply of electric energy and all services made competitive by the

1 Commission pursuant to § 56-581.1. If a distribution electric cooperative, or one
2 or more affiliates thereof, elects or seeks to be a default supplier of another
3 electric utility, then the Commission shall designate the default supplier for that
4 distribution electric cooperative, or any affiliate thereof, pursuant to subsection B.

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6 **§ 56-587. Licensure of retail electric energy suppliers and persons**
7 **providing other competitive services.**

8 A. As a condition of doing business in the Commonwealth each person
9 seeking to sell, offering to sell, or selling (i) electric energy to any retail customer
10 in the Commonwealth, on and after January 1, 2002, or (ii) any service that the
11 Commission, pursuant to § 56-581.1, has determined may be provided by
12 persons licensed to provide such service shall obtain a license from the
13 Commission to do so. A license shall not be required solely for the leasing or
14 financing of property used in the sale of electricity to any retail customer in the
15 Commonwealth.

16 The license shall authorize that person to engage in the activities authorized by
17 such license until the license expires or is otherwise terminated, suspended or
18 revoked.

19 B. 1. As a condition of obtaining, retaining and renewing any license
20 issued pursuant to this section, a person shall satisfy such reasonable and
21 nondiscriminatory requirements as may be specified by the Commission, which
22 may include requirements that such person (i) demonstrate, in a manner
23 satisfactory to the Commission, financial responsibility; (ii) post a bond as

1 deemed adequate by the Commission to ensure that financial responsibility; (iii)
2 pay an annual license fee to be determined by the Commission; and (iv) pay all
3 taxes and fees lawfully imposed by the Commonwealth or by any municipality or
4 other political subdivision of the Commonwealth. In addition, as a condition of
5 obtaining, retaining and renewing any license pursuant to this section, a person
6 shall satisfy such reasonable and nondiscriminatory requirements as may be
7 specified by the Commission, including but not limited to requirements that such
8 person demonstrate (i) technical capabilities as the Commission may deem
9 appropriate; (ii) in the case of persons seeking to sell, offering to sell, or selling
10 electric energy to any retail customer in the Commonwealth, access to
11 generation and generation reserves; and (iii) adherence to minimum market
12 conduct standards.

13 2. Any license issued by the Commission pursuant to this section to
14 persons seeking to sell, offering to sell, or selling electric energy to any retail
15 customer in the Commonwealth, may be conditioned upon the licensee
16 furnishing to the Commission prior to the provision of electric energy to
17 consumers proof of adequate access to generation and generation reserves.

18 C. 1. The Commission shall establish a reasonable period within which
19 any retail customer may cancel, without penalty or cost, any contract entered into
20 with ~~a supplier~~ any person licensed pursuant to this section.

21 2. The Commission may adopt other rules and regulations governing the
22 requirements for obtaining, retaining, and renewing a license ~~to supply electric~~
23 ~~energy to retail customers~~ issued pursuant to this section, and may, as

1 appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew
2 the license of, any person that does not meet those requirements.

3 D. Notwithstanding the provisions of § 13.1-620, a public service
4 company may, through an affiliate or subsidiary, conduct one or more of the
5 following businesses, even if such business is not related to or incidental to its
6 stated business as a public service company: (i) become licensed as a retail
7 electric energy supplier pursuant to this section, or for purposes of participation in
8 an approved pilot program encompassing retail customer choice of electric
9 energy suppliers; (ii) become licensed as an aggregator pursuant to § 56-588, or
10 for purposes of participation in an approved pilot program encompassing retail
11 customer choice of electric energy suppliers; (iii) become licensed to furnish any
12 service that the Commission, pursuant to § 56-581.1, has determined may be
13 provided by persons licensed to provide such service, or ~~(iii)~~ (iv) own, manage or
14 control any plant or equipment or any part of a plant or equipment used for the
15 generation of electric energy.

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17 **§ 56-590. Divestiture, functional separation and other corporate**
18 **relationships.**

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

22 B. 1. The Commission shall, however, direct the functional separation of
23 generation, retail transmission and distribution of all incumbent electric utilities in

1 connection with the provisions of this chapter to be completed by January 1,
2 2002.

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

7 3. Consistent with this chapter, the Commission may impose conditions,
8 as the public interest requires, upon its approval of ~~the~~any incumbent electric
9 utility's plan for functional separation, including requirements that (i) the
10 incumbent electric utility's generation assets or their equivalent remain available
11 for electric service during the capped rate period as provided in § 56-582 and, if
12 applicable, during any period the incumbent electric utility serves as a default
13 provider as provided for in § 56-585, and (ii) the incumbent electric utility receive
14 Commission approval for the sale, transfer or other disposition of generation
15 assets during the capped rate period and, if applicable, during any period the
16 incumbent electric utility serves as a default provider.

17 C. Where the Commission under § 56-581.1 has made services subject
18 to competition, the Commission shall direct the functional separation of such
19 services to the extent necessary to achieve the purposes of this section. Each
20 affected incumbent electric utility shall, by dates prescribed by the Commission,
21 submit for the Commission's approval a plan for such functional separation.

22 GD. The Commission shall, to the extent necessary to promote effective
23 competition in the Commonwealth, promulgate rules and regulations to carry out

1 the provisions of this section, which rules and regulations shall include
2 provisions:

3 1. Prohibiting cost-shifting or cross-subsidies between functionally
4 separate units;

5 2. Prohibiting functionally separate units from engaging in anticompetitive
6 behavior or self-dealing;

7 3. Prohibiting affiliated entities from engaging in discriminatory behavior
8 towards nonaffiliated units; and

9 4. Establishing codes of conduct detailing permissible relations between
10 functionally separate units.

11 ~~D~~E. Neither a covered entity nor an affiliate thereof may be a party to a
12 covered transaction without the prior approval of the Commission. Any such
13 person proposing to be a party to such transaction shall file an application with
14 the Commission. The Commission shall approve or disapprove such transaction
15 within sixty days after the filing of a completed application; however, the sixty-day
16 period may be extended by Commission order for a period not to exceed an
17 additional 120 days. The application shall be deemed approved if the
18 Commission fails to act within such initial or extended period. The Commission
19 shall approve such application if it finds, after notice and opportunity for hearing,
20 that the transaction will comply with the requirements of subsection ~~E~~F, and
21 may, as a part of its approval, establish such conditions or limitations on such
22 transaction as it finds necessary to ensure compliance with subsection ~~E~~F.

23 ~~E~~F. A transaction described in subsection ~~D~~E shall not:

1 customer must affirmatively select such municipality or other political subdivision
2 as its aggregator. The municipality or other political subdivision may not earn a
3 profit but must recover the actual costs incurred in such aggregation.

4 2. Any municipality or other political subdivision of the Commonwealth may
5 aggregate the electric energy load of its governmental buildings, facilities and
6 any other governmental operations requiring the consumption of electric energy.

7 Aggregation pursuant to this subdivision shall not require licensure pursuant to §
8 56-588.

9 3. Two or more municipalities or other political subdivisions within this
10 Commonwealth may aggregate the electric energy load of their governmental
11 buildings, facilities and any other governmental operations requiring the
12 consumption of electric energy. Aggregation pursuant to this subdivision shall
13 not require licensure pursuant to § 56-588.

14 B. The Commonwealth, at its election, may aggregate the electric energy load of
15 its governmental buildings, facilities, and any other government operations
16 requiring the consumption of electric energy for the purpose of negotiating the
17 purchase of electricity from any licensed supplier within this Commonwealth.

18 Aggregation pursuant to this subdivision shall not require licensure pursuant to §
19 56-588.

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III. Aggregation; technical amendment

§ 56-588. Licensing of aggregators.

A. As a condition of doing business in the Commonwealth, each person seeking to aggregate electric energy within this Commonwealth on and after January 1, 2002, shall obtain a license from the Commission to do so. The license shall authorize that person to act as an aggregator until the license expires or is otherwise terminated, suspended or revoked. Licensing pursuant to this section, however, shall not relieve any person seeking to act as a supplier of electric energy from their obligation to obtain a license as a supplier pursuant to § 56-587.

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) provide background information; (ii) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (iii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iv) pay an annual license fee to be determined by the Commission; and (v) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and

1 nondiscriminatory requirements as may be specified by the Commission,
2 including, but not limited to, requirements that such person demonstrate technical
3 capabilities as the Commission may deem appropriate. Any license issued by the
4 Commission pursuant to this section may be conditioned upon the licensee, if
5 acting as a supplier, furnishing to the Commission prior to the provision of
6 electricity to consumers proof of adequate access to generation and generation
7 reserves.

8 C. In establishing aggregator licensing schemes and requirements applicable to
9 the same, the Commission may differentiate between (i) those aggregators
10 representing retail customers only, (ii) those aggregators representing suppliers
11 only, and (iii) those aggregators representing both retail customers and suppliers.

12 D. 1. The Commission shall establish a reasonable period within which any retail
13 customer may cancel, without penalty or cost, any contract entered into with a
14 ~~supplier~~ an aggregator licensed pursuant to this section.

15 2. The Commission may adopt other rules and regulations governing the
16 requirements for obtaining, retaining, and renewing a license to aggregate
17 electric energy to retail customers, and may, as appropriate, refuse to issue a
18 license to, or suspend, revoke, or refuse to renew the license of, any person that
19 does not meet those requirements.

IV. Consumption Tax; net metering.

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§ 58.1-2900. (Effective January 1, 2001) 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 the kilowatt hours delivered by the incumbent distribution utility and used per month as follows:

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

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

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

State	Special	Local
consumption	regulatory	consumption
tax rate	tax rate	23m tax rate
\$0.00065/kWh	\$0.00010/kWh	\$0.00024/kWh

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

4 State	Special	Local
5 consumption	regulatory	consumption
6 tax rate	tax rate	tax rate
7 \$0.00050/kWh	\$0.00007/kWh	\$0.00018/kWh

8 4. The tax rates set forth in subdivisions 1, 2, and 3 in are in lieu of and replace
9 the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§
10 58.1-2660), and the local license tax (§ 58.1-3731) levied on corporations
11 furnishing heat, light or power by means of electricity.

12 5. The tax on consumers under this section shall not be imposed on consumers
13 served by an electric utility owned or operated by a municipality if such municipal
14 electric utility elects to have an amount equivalent to the tax added on the bill
15 such utility (or an association or agency of which it is a member) pays for
16 bundled or unbundled transmission service as a separate item. Such amount,
17 equivalent to the tax, shall be calculated under the tax rate schedule as if the
18 municipal electric utility were selling and collecting the tax from its consumers,
19 adjusted to exclude the amount which represents the local consumption tax if the
20 locality in which a consumer is located does not impose a license fee rate
21 pursuant to § 58.1-3731, and shall be remitted to the Commission pursuant to §
22 58.1-2901. Municipal electric utilities may bundle the tax in the rates charged to
23 their retail customers. Notwithstanding anything contained herein to the contrary,

1 the election permitted under this subdivision shall not be exercised by any
2 municipal electric utility if the entity to whom the municipal electric utility (or an
3 association or agency of which it is a member) pays for transmission service is
4 not subject to the taxing jurisdiction of the Commonwealth, unless such entity
5 agrees to remit to the Commonwealth all amounts equivalent to the tax pursuant
6 to § 58.1-2901.

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

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

13

14 **V. Private right of action; technical amendment**

15 **§ 56-593. Retail customers' private right of action; marketing practices.**

16 A. No entity subject to this chapter shall use any deception, fraud, false
17 pretense, misrepresentation, or any deceptive or unfair practices in providing,
18 distributing or marketing electric service.

19 B. 1. Any person who suffers loss (I) as the result of marketing practices,
20 including telemarketing practices, engaged in by any public service company,
21 licensed supplier, aggregator or any other provider of any service made
22 competitive under this chapter, and in violation of subsection C of § 56-592,
23 including any rule or regulation adopted by the Commission pursuant thereto, or

1 (ii) as the result of any violation of subsection A, shall be entitled to initiate an
2 action to recover actual damages, or \$500, whichever is greater. If the trier of fact
3 finds that the violation was willful, it may increase damages to an amount not
4 exceeding three times the actual damages sustained, or \$1,000, whichever is
5 greater.

6 2. Upon referral from the Commission, the Attorney General, the attorney for the
7 Commonwealth, or the attorney for any city, county, or town may cause an action
8 to be brought in the appropriate circuit court for relief of violations within the
9 scope of (l) subsection C of § 56-592, including any rule or regulation adopted by
10 the Commission pursuant thereto or (ii) subsection A.

11 C. Notwithstanding any other provision of law to the contrary, in addition to any
12 damages awarded, such person, or any governmental agency initiating such
13 action, also may be awarded reasonable attorney's fees and court costs.

14 D. Any action pursuant to this section shall be commenced within two years after
15 its accrual. The cause of action shall accrue as provided in § 8.01-230. However,
16 if the Commission initiates proceedings, or any other governmental agency files
17 suit for the purpose of enforcing subsection A of this section, or the provisions of
18 subsection C of § 56-592, the time during which such proceeding or
19 governmental suit and all appeals therefrom is pending shall not be counted as
20 any part of the period within which an action under this section shall be brought.

21 E. The circuit court may make such additional orders or decrees as may be
22 necessary to restore to any identifiable person any money or property, real,
23 personal, or mixed, tangible or intangible, which may have been acquired from

1 such person by means of any act or practice violative of subsection A of this
2 section, or subsection C of § 56-592, provided, that such person shall be
3 identified by order of the court within 180 days from the date of any order
4 permanently enjoining the unlawful act or practice.

5 F. In any case arising under this section, no liability shall be imposed upon any
6 licensed supplier, aggregator or any other provider of any service made
7 competitive under this chapter, who shows by a preponderance of the evidence
8 that (i) the act or practice alleged to be in violation of subsection A of this section,
9 or subsection C of § 56-592 was an act or practice over which the same had no
10 control or (ii) the alleged violation resulted from a bona fide error notwithstanding
11 the maintenance of procedures reasonably adopted to avoid a violation.

12 However, nothing in this section shall prevent the court from ordering restitution
13 and payment of reasonable attorney's fees and court costs pursuant to
14 subsection C to individuals aggrieved as a result of an unintentional violation of
15 subsection A of this section, or subsection C of § 56-592.

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17 **VI. Wires charges; technical and clarifying amendments.**

18 **§ 56-583. Wires charges.**

19 A. To provide the opportunity for competition and consistent with § 56-584, the
20 Commission shall establish wires charges for each incumbent electric utility,
21 effective upon the commencement of customer choice, which shall be the sum (i)
22 of the difference between the incumbent utilities' capped unbundled rates for
23 generation and projected market prices for generation, as determined by the

1 Commission, and (ii) any transition costs incurred by the incumbent electric utility
2 determined by the Commission to be just and reasonable; however, the sum of
3 such wires charges, the unbundled charge for transmission and ancillary
4 services, the applicable distribution rates established by the Commission and the
5 above projected market prices for generation shall not exceed the capped rates
6 established under § 56-582 A 1 applicable to such incumbent electric utility. The
7 Commission shall adjust such wires charges not more frequently than annually
8 and shall seek to coordinate adjustments of wires charges with any adjustments
9 of capped rates pursuant to § 56-582.

10 B. Customers that choose suppliers of electric energy, other than the incumbent
11 electric utility, or are subject to and receiving default service, prior to the
12 expiration of the period for capped rates, as provided for in § 56-582, shall pay a
13 wires charge determined pursuant to subsection A based upon actual usage of
14 electricity distributed by the incumbent electric utility to the customer (i) during
15 the period from the time ~~#the customer~~ chooses a supplier of electric energy
16 other than the incumbent electric utility, or (ii) during the period from the time the
17 customer is subject to and receives default service until capped rates expire or
18 are terminated, as provided in § 56-582.

19 C. The Commission shall permit any customer, at its option, to pay the wires
20 charges owed to an incumbent electric utility on an accelerated or deferred basis
21 upon a finding that such method is not (i) prejudicial to the incumbent electric
22 utility or its ratepayers or (ii) inconsistent with the development of effective

1 competition, provided, however, that all deferred wires charges shall be paid in
2 full by July 1, 2007.

3 D. A supplier of retail electric energy may pay any or all of the wires charge
4 owed by any customer to an incumbent electric utility. The supplier may not only
5 pay such wires charge on behalf of any customer, but also contract with any
6 customer to finance such payments. Further, on request of a supplier, the
7 incumbent electric utility shall enter into a contract allowing such supplier to pay
8 such wires charge on an accelerated or deferred basis. Such contract shall
9 contain terms and conditions, specified in rules and regulations promulgated by
10 the Commission to implement the provisions of this subsection, that fully
11 compensate the incumbent electric utility for such wires charge, including
12 reasonable compensation for the time value of money.

13

14 **VII. Rate Caps, rate cases prior to January 1, 2001, interim rates;**

15 **payment of refunds with interest.**

16 **§ 56-582. Rate caps.**

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

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

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

5 3. The capped rates established under this section shall be the rates in effect for
6 each incumbent utility as of the effective date of this chapter, or rates
7 subsequently placed into effect pursuant to a rate application filed by an
8 incumbent electric utility with the Commission prior to January 1, 2001, and
9 subsequently approved by the Commission, and made by an incumbent electric
10 utility that is not currently bound by a rate case settlement adopted by the

11 Commission that extends in its application beyond January 1, 2002. If such rate
12 application is filed, the rates proposed therein shall go into effect on January 1,
13 2001, but such rates shall be interim in nature and subject to refund until such
14 time as the Commission has completed its investigation of such application. Any
15 amount of the rates found excessive by the Commission shall be subject to
16 refund with interest, as may be ordered by the Commission. The Commission

17 shall act upon such applications prior to commencement of the period of
18 transition to customer choice ~~and capped rates determined pursuant to such~~
19 ~~applications shall become effective on January 1, 2004.~~ Such rate application
20 and the Commission's approval shall give due consideration, on a forward-
21 looking basis, to the justness and reasonableness of rates to be effective for a
22 period of time ending as late as July 1, 2007. The capped rates established
23 under this section, which include rates, tariffs, electric service contracts, and rate

1 programs (including experimental rates, regardless of whether they otherwise
2 would expire), shall be such rates, tariffs, contracts, and programs of each
3 incumbent electric utility, provided that experimental rates and rate programs
4 may be closed to new customers upon application to the Commission.

5 B. The Commission may adjust such capped rates in connection with (i) utilities'
6 recovery of fuel costs pursuant to § 56-249.6, (ii) any changes in the taxation by
7 the Commonwealth of incumbent electric utility revenues, (iii) any financial
8 distress of the utility beyond its control, (iv) respect to cooperatives that were not
9 members of a power supply cooperative on January 1, 1999, and as long as they
10 do not become members, their cost of purchased wholesale power, and (v)
11 respect to cooperatives that were members of a power supply cooperative on
12 January 1, 1999, their recovery of fuel costs, through the wholesale power cost
13 adjustment clauses of their tariffs pursuant to § 56-226. Notwithstanding the
14 provisions of § 56-249.6, the Commission may authorize tariffs that include
15 incentives designed to encourage an incumbent electric utility to reduce its fuel
16 costs by permitting retention of a portion of cost savings resulting from fuel cost
17 reductions or by other methods determined by the Commission to be fair and
18 reasonable to the utility and its customers.

19 C. A utility may petition the Commission to terminate the capped rates to all
20 customers anytime after January 1, 2004, and such capped rates may be
21 terminated upon the Commission finding of an effectively competitive market for
22 generation services within the service territory of that utility. If the capped rates
23 are continued after January 1, 2004, an incumbent electric utility which is not, as

1 of the effective date of this chapter, bound by a rate case settlement adopted by
2 the Commission that extends in its application beyond January 1, 2002, may
3 petition the Commission for approval of a one-time change in the nongeneration
4 components of such rates.

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

12 E. During the period when capped rates are in effect for an incumbent electric
13 utility, such utility may file with the Commission a plan describing the method
14 used by such utility to assure full funding of its nuclear decommissioning
15 obligation and specifying the amount of the revenues collected under either the
16 capped rates, as provided in this section, or the wires charges, as provided in §
17 56-583, that are dedicated to funding such nuclear decommissioning obligation
18 under the plan. The Commission shall approve the plan upon a finding that the
19 plan is not contrary to the public interest.

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VIII. Consumer Education.

§ 56-592.1. Consumer education program; scope and funding.

A. The Commission shall establish and implement a consumer education program in conjunction with the implementation of this chapter. In establishing such a program, the Commission shall take into account findings and recommendations in the Commission's December 1, 1999 report to the Legislative Transition Task Force made pursuant to § 56-592.

B. The program shall be designed to (i) enable consumers to make rational and informed choices about energy providers in a competitive retail market, (ii) help consumers reduce transaction costs in selecting energy suppliers, and (iii) foster compliance with the consumer protection provisions of this chapter, and those contained in other laws of this Commonwealth, by all participants in a competitive retail market.

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

D. Pursuant to the provisions of § 56-595, the Commission shall provide periodic updates to the Legislative Transition Task Force concerning the program's implementation and operation.

E. The Commission shall fund the establishment and operation of such consumer education program through the special regulatory revenue tax

1 currently authorized under § 58.1-2660, and the special regulatory tax authorized
2 by Chapter 29 (§ 58.1-2900, et seq.) of Title 58.1.

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