

1 **State Corporation Commission**

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

5
6 **November 9, 1999**

7
8
9 **§ 56-581. Regulation of rates subject to Commission's jurisdiction.**

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

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

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

5 **§ 56-581.1. Commission authority to make services competitive.**

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

14 1. Be consistent with the goal of facilitating the development of
15 effective competition in electric service for all customer classes;

16 2. Take into account the readiness of customers and suppliers to buy
17 and sell such services;

18 3. Not jeopardize the safety, reliability or quality of electric service;

19 4. Consider the degree of control exerted over utility operations by
20 utility customers;

21 5. Not adversely affect the ability of an incumbent electric utility
22 authorized or obligated to provide electric service to customers who do

1 not 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,
8 or 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.
15 The foregoing shall apply to an affiliate of an incumbent electric utility if such
16 affiliate controls a resource which is necessary to the development of
17 competition for such service.

18 D. Any person seeking to sell, offering to sell, or selling services
19 made competitive pursuant to this section shall be subject to the licensure
20 requirements 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
- 2 reflect costs associated with or properly allocable to the service made subject to
- 3 competition.

1 **§ 56-587. Licensure of retail electric energy suppliers and persons**
2 **providing other competitive services.**

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

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

14 B. 1. As a condition of obtaining, retaining and renewing any license
15 issued pursuant to this section, a person shall satisfy such reasonable and
16 nondiscriminatory requirements as may be specified by the Commission, which
17 may include requirements that such person (i) demonstrate, in a manner
18 satisfactory to the Commission, financial responsibility; (ii) post a bond as
19 deemed adequate by the Commission to ensure that financial responsibility; (iii)
20 pay an annual license fee to be determined by the Commission; and (iv) pay all
21 taxes and fees lawfully imposed by the Commonwealth or by any municipality or
22 other political subdivision of the Commonwealth. In addition, as a condition of
23 obtaining, retaining and renewing any license pursuant to this section, a person

1 shall satisfy such reasonable and nondiscriminatory requirements as may be
2 specified by the Commission, including but not limited to requirements that such
3 person demonstrate (i) technical capabilities as the Commission may deem
4 appropriate; (ii) in the case of persons seeking to sell, offering to sell, or selling
5 electric energy to any retail customer in the Commonwealth, access to
6 generation and generation reserves; and (iii) adherence to minimum market
7 conduct standards.

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

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

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

21 D. Notwithstanding the provisions of § 13.1-620, a public service
22 company may, through an affiliate or subsidiary, conduct one or more of the
23 following businesses, even if such business is not related to or incidental to its

1 stated business as a public service company: (i) become licensed as a retail
2 electric energy supplier pursuant to this section, or for purposes of participation
3 in an approved pilot program encompassing retail customer choice of electric
4 energy suppliers; (ii) become licensed as an aggregator pursuant to § 56-588, or
5 for purposes of participation in an approved pilot program encompassing retail
6 customer choice of electric energy suppliers; (iii) become licensed to furnish
7 any service that the Commission, pursuant to § 56-581.1, has determined may
8 be provided by persons licensed to provide such service, or ~~(iii)~~ (iv) own,
9 manage or control any plant or equipment or any part of a plant or equipment
10 used for the generation of electric energy.

11

12 **§ 56-580. Transmission and distribution of electric energy; codes of**
13 **conduct; competitive services.**

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

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

21 C. The Commission shall develop codes of conduct governing the conduct of
22 incumbent electric utilities and affiliates thereof when any such affiliates provide,
23 or control any entity that provides, generation, distribution ~~or~~, transmission or

1 any services made competitive pursuant to § 56-581.1, to the extent necessary
2 to prevent impairment of competition.

3 D. The Commission may permit the construction and operation of electrical
4 generating facilities upon a finding that such generating facility and associated
5 facilities including transmission lines and equipment (i) will have no material
6 adverse effect upon reliability of electric service provided by any regulated
7 public utility and (ii) are not otherwise contrary to the public interest. In review of
8 its petition for a certificate to construct and operate a generating facility
9 described in this subsection, the Commission shall give consideration to the
10 effect of the facility and associated facilities, including transmission lines and
11 equipment, on the environment and establish such conditions as may be
12 desirable or necessary to minimize adverse environmental impact as provided in
13 § 56-46.1.

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

22 F. Nothing in this chapter shall impair the exclusive territorial rights of an
23 electric utility owned or operated by a municipality as of July 1, 1999, nor shall

1 any provision of this chapter apply to any such electric utility unless (i) that
2 municipality elects to have this chapter apply to that utility or (ii) that utility,
3 directly or indirectly, sells, offers to sell or seeks to sell electric energy to any
4 retail customer outside the geographic area that was served by such municipality
5 as of July 1, 1999.

6

7 **§ 56-590. Divestiture, functional separation and other corporate**
8 **relationships.**

9

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

13 B. 1. The Commission shall, however, direct the functional separation of
14 generation, retail transmission and distribution of all incumbent electric utilities in
15 connection with the provisions of this chapter to be completed by January 1,
16 2002.

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

21 3. Consistent with this chapter, the Commission may impose conditions,
22 as the public interest requires, upon its approval of ~~the~~any incumbent electric
23 utility's plan for functional separation, including requirements that (i) the

1 incumbent electric utility's generation assets or their equivalent remain available
2 for electric service during the capped rate period as provided in § 56-582 and, if
3 applicable, during any period the incumbent electric utility serves as a default
4 provider as provided for in § 56-585, and (ii) the incumbent electric utility receive
5 Commission approval for the sale, transfer or other disposition of generation
6 assets during the capped rate period and, if applicable, during any period the
7 incumbent electric utility serves as a default provider.

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

13 ED. The Commission shall, to the extent necessary to promote effective
14 competition in the Commonwealth, promulgate rules and regulations to carry out
15 the provisions of this section, which rules and regulations shall include
16 provisions:

- 17 1. Prohibiting cost-shifting or cross-subsidies between functionally
18 separate units;
- 19 2. Prohibiting functionally separate units from engaging in anticompetitive
20 behavior or self-dealing;
- 21 3. Prohibiting affiliated entities from engaging in discriminatory behavior
22 towards nonaffiliated units; and

1 4. Establishing codes of conduct detailing permissible relations between
2 functionally separate units.

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

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

16 1. Substantially lessen competition among the actual or prospective
17 providers of noncompetitive electric service or of a service which is, or is likely to
18 become, a competitive electric service; or

19 2. Jeopardize or impair the safety or reliability of electric service in the
20 Commonwealth, or the provision of any noncompetitive electric service at just
21 and reasonable rates.

22 ~~F~~G Nothing in this chapter shall be deemed to abrogate or modify the
23 Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or

1 5 (§ 56-88 et seq.) of this title. However, any person subject to the requirements
2 of subsection ~~D~~E that is also subject to the requirements of Chapter 5 of this
3 title may be exempted from compliance with the requirements of Chapter 5 of
4 this title.

5 **§ 56-585. Default service.**

6 A. The Commission shall, after notice and opportunity for hearing, (i) determine
7 the components of default service and (ii) establish one or more programs
8 making such services available to retail customers requiring them commencing
9 with the date of customer choice for all retail customers established pursuant to
10 § 56-577. For purposes of this chapter, "default service" means service made
11 available under this section to retail customers who (i) do not affirmatively select
12 a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii)
13 have contracted with an alternative supplier who fails to perform.

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

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

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

1 3. In the absence of a finding under subdivision 2, may require an incumbent
2 electric utility or distribution utility to provide one or more components of such
3 services, or to form an affiliate to do so, in one or more regions of the
4 Commonwealth, at rates which are fairly compensatory to the utility and which
5 reflect any cost of energy prudently procured, including energy procured from
6 the competitive market; however, the Commission may not require an incumbent
7 electric utility or distribution utility, or affiliate thereof, to provide any such
8 services outside the territory in which such utility provides service.

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

17 D. On or before July 1, 2004, and annually thereafter, the Commission shall
18 determine, after notice and opportunity for hearing, whether there is a sufficient
19 degree of competition such that the elimination of default service for particular
20 customers, particular classes of customers or particular geographic areas of the
21 Commonwealth will not be contrary to the public interest. The Commission shall
22 report its findings and recommendations concerning modification or termination
23 of default service to the General Assembly and to

1 the Legislative Transition Task Force, not later than December 1, 2004, and
2 annually thereafter.

3 E. A distribution electric cooperative, or one or more affiliates thereof, shall have
4 the obligation and right to be the supplier of default services in its certificated
5 service territory. Such default services, for the purposes of this subsection, shall
6 include the supply of electric energy and all services made competitive by the
7 Commission pursuant to § 56-581.1. If a distribution electric cooperative, or one
8 or more affiliates thereof, elects or seeks to be a default supplier of another
9 electric utility, then the Commission shall designate the default supplier for that
10 distribution electric cooperative, or any affiliate thereof, pursuant to subsection

11 B.

12

13 **§ 56-589. Municipal and state aggregation.**

14 A. Counties, cities and towns (hereafter "municipalities") and other political
15 subdivisions of the Commonwealth may, at their election and upon authorization
16 by majority votes of their governing bodies, aggregate electrical energy and
17 demand requirements for the purpose of negotiating the purchase of electrical
18 energy requirements from any licensed supplier within this Commonwealth, as
19 follows:

20 1. Any municipality or other political subdivision of the Commonwealth may
21 aggregate the electric energy load of residential, commercial and industrial retail
22 customers within its boundaries on a voluntary, opt-in basis in which each such
23 customer must affirmatively select such municipality or other political subdivision

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

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

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

8 3. Two or more municipalities or other political subdivisions within this
9 Commonwealth may aggregate the electric energy load of their governmental
10 buildings, facilities and any other governmental operations requiring the
11 consumption of electric energy. Aggregation pursuant to this subdivision shall
12 not require licensure pursuant to § 56-588.B. The Commonwealth, at its
13 election, may aggregate the electric energy load of its governmental buildings,
14 facilities, and any other government operations requiring the consumption of
15 electric energy for the purpose of negotiating the purchase of electricity from any
16 licensed supplier within this Commonwealth. Aggregation pursuant to this
17 subdivision shall not require licensure pursuant to § 56-588.

18

19 **§ 56-588. Licensing of aggregators.**

20 A. As a condition of doing business in the Commonwealth, each person seeking
21 to aggregate electric energy within this Commonwealth on and after January 1,
22 2002, shall obtain a license from the Commission to do so. The license shall
23 authorize that person to act as an aggregator until the license expires or is

1 otherwise terminated, suspended or revoked. Licensing pursuant to this section,
2 however, shall not relieve any person seeking to act as a supplier of electric
3 energy from their obligation to obtain a license as a supplier pursuant to § 56-
4 587.

5 B. As a condition of obtaining, retaining and renewing any license issued
6 pursuant to this section, a person shall satisfy such reasonable and
7 nondiscriminatory requirements as may be specified by the Commission, which
8 may include requirements that such person (i) provide background information;
9 (ii) demonstrate, in a manner satisfactory to the Commission, financial
10 responsibility; (iii) post a bond as deemed adequate by the Commission to
11 ensure that financial responsibility; (iv) pay an annual license fee to be
12 determined by the Commission; and (v) pay all taxes and fees lawfully imposed
13 by the Commonwealth or by any municipality or other political subdivision of the
14 Commonwealth. In addition, as a condition of obtaining, retaining and renewing
15 any license pursuant to this section, a person shall satisfy such reasonable and
16 nondiscriminatory requirements as may be specified by the Commission,
17 including, but not limited to, requirements that such person demonstrate
18 technical capabilities as the Commission may deem appropriate. Any license
19 issued by the Commission pursuant to this section may be conditioned upon the
20 licensee, if acting as a supplier, furnishing to the Commission prior to the
21 provision of electricity to consumers proof of adequate access to generation and
22 generation reserves.

1 C. In establishing aggregator licensing schemes and requirements applicable to
2 the same, the Commission may differentiate between (i) those aggregators
3 representing retail customers only, (ii) those aggregators representing suppliers
4 only, and (iii) those aggregators representing both retail customers and
5 suppliers.

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

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

14

15 **§ 56-594. Net energy metering provisions.**

16 A. The Commission shall establish by regulation a program, to begin no later
17 than July 1, 2000, which affords eligible customer-generators the opportunity to
18 participate in net energy metering. The regulations may include, but need not be
19 limited to, requirements for (i) retail sellers; (ii) owners and/or operators of
20 distribution or transmission facilities; (iii) providers of default service; (iv) eligible
21 customer-generators; or (v) any combination of the foregoing, as the
22 Commission determines will facilitate the provision of net energy metering,

1 provided that the Commission determines that such requirements do not
2 adversely affect the public interest.

3 B. For the purpose of this section:

4 "Eligible customer-generator" means a customer that owns and operates an
5 electrical generating facility that (i) has a capacity of not more than ten kilowatts
6 for residential customers and twenty-five kilowatts for nonresidential customers;
7 (ii) uses as its total source of fuel solar, wind, or hydro energy; (iii) is located on
8 the customer's premises; (iv) is interconnected and operated in parallel with an
9 electric company's transmission and distribution facilities; and (v) is intended
10 primarily to offset all or part of the customer's own electricity requirements.

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

15 "Net metering period" means (i) the twelve-month period following the date of
16 final interconnection of the eligible customer-generator's system with an electric
17 service provider, and each twelve-month period thereafter, or (ii) such shorter
18 period as the Commission may allow in order to facilitate customer choice.

19 C. The Commission's regulations shall ensure that the metering equipment
20 installed for net metering shall be capable of measuring the flow of electricity in
21 two directions, and shall allocate fairly the cost of such equipment and any
22 necessary interconnection. An eligible customer-generator's solar, wind or hydro
23 electrical generating system shall meet all applicable safety and performance

1 standards established by the National Electrical Code, the Institute of Electrical
2 and Electronics Engineers, and accredited testing laboratories such as
3 Underwriters Laboratories. Beyond the requirements set forth in this section, a
4 customer-generator whose solar, wind or hydro electrical generating system
5 meets those standards and rules shall bear the reasonable cost, if any, as
6 determined by the Commission, to (i) install additional controls, (ii) perform or
7 pay for additional tests, or (iii) purchase additional liability insurance.

8 D. The Commission shall establish minimum requirements for contracts to be
9 entered into by the parties to net metering arrangements. Such requirements
10 shall protect the customer-generator against discrimination by virtue of its status
11 as a customer-generator. Where electricity generated by the customer-generator
12 over the net metering period exceeds the electricity consumed by the customer-
13 generator, the customer-generator shall not be compensated for the excess
14 electricity unless the entity contracting to receive such electric energy and the
15 customer-generator enter into a power purchase agreement for such excess
16 electricity. The net metering standard contract or tariff shall be available to
17 eligible customer-generators on a first-come, first-served basis in each electric
18 distribution company's Virginia service area until the rated generating capacity
19 owned and operated by eligible customer-generators in the state reaches 0.1
20 percent of each electric distribution company's adjusted Virginia peak-load
21 forecast for the previous year.

22

23 **§ 58.1-2900. (Effective January 1, 2001) Imposition of tax.**

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

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

9 State	Special	Local
10 consumption	regulatory	consumption
11 tax rate	tax rate	tax rate
12 \$0.00102/kWh	\$0.00015/kWh	\$0.00038/kWh

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

16 State	Special	Local
17 consumption	regulatory	consumption
18 tax rate	tax rate 23m	tax rate
19 \$0.00065/kWh	\$0.00010/kWh	\$0.00024/kWh

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

23 State	Special	Local
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1	consumption	regulatory	consumption
2	tax rate	tax rate	tax rate
3	\$0.00050/kWh	\$0.00007/kWh	\$0.00018/kWh

4 4. The tax rates set forth in subdivisions 1, 2, and 3 in are in lieu of and replace
5 the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§
6 58.1-2660), and the local license tax (§ 58.1-3731) levied on corporations
7 furnishing heat, light or power by means of electricity.

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

1 agrees to remit to the Commonwealth all amounts equivalent to the tax pursuant
2 to § 58.1-2901.

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

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

10

11 **§ 56-576. Definitions.**

12 As used in this chapter:

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

15 "Aggregator" means a person licensed by the Commission that purchases or
16 arranges for the purchase of electric energy as an agent or intermediary for sale
17 to, or on behalf of, two or more retail customers.

18 "Commission" means the State Corporation Commission.

19 "Cooperative" means a utility formed under or subject to Chapter 9 (§ 56-209 et
20 seq.) of this title.

21 "Covered entity" means a provider in the Commonwealth of an electric service
22 not subject to competition but shall not include default service providers that are
23 not incumbent electric utilities.

1 "Covered transaction" means an acquisition, merger, or consolidation of, or
2 other transaction involving stock, securities, voting interests or assets by which
3 one or more persons obtains control of (i) a covered entity, or (ii) a covered
4 entity's facilities in place for the production, transmission or distribution of
5 electric energy.

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

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

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

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

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

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

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

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

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

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

10 "Period of transition to customer choice" means the period beginning on January
11 1, 2002, and ending on January 1, 2004, unless otherwise extended by the
12 Commission pursuant to this chapter, during which the Commission and all
13 electric utilities authorized to do business in the Commonwealth shall implement
14 customer choice for retail customers in the Commonwealth.

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

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

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

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

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

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

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

13

14 **§ 56-593. Retail customers' private right of action; marketing practices.**

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

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

1 action to recover actual damages, or \$500, whichever is greater. If the trier of
2 fact finds that the violation was willful, it may increase damages to an amount
3 not exceeding three times the actual damages sustained, or \$1,000, whichever
4 is greater.

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

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

13 D. Any action pursuant to this section shall be commenced within two years
14 after its accrual. The cause of action shall accrue as provided in § 8.01-230.

15 However, if the Commission initiates proceedings, or any other governmental
16 agency files suit for the purpose of enforcing subsection A of this section, or the
17 provisions of subsection C of § 56-592, the time during which such proceeding
18 or governmental suit and all appeals therefrom is pending shall not be counted
19 as any part of the period within which an action under this section shall be
20 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
9 section, or subsection C of § 56-592 was an act or practice over which the same
10 had no control or (ii) the alleged violation resulted from a bona fide error
11 notwithstanding the maintenance of procedures reasonably adopted to avoid a
12 violation. However, nothing in this section shall prevent the court from ordering
13 restitution and payment of reasonable attorney's fees and court costs pursuant
14 to subsection C to individuals aggrieved as a result of an unintentional violation
15 of subsection A of this section, or subsection C of § 56-592.

16

17 **§ 56-583. Wires charges.**

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

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

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

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

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

11

12 **§ 56-582. Rate caps.**

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

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

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

1 3. The capped rates established under this section shall be the rates in effect for
2 each incumbent utility as of the effective date of this chapter, or rates
3 subsequently placed into effect pursuant to a rate application filed by an
4 incumbent electric utility with the Commission prior to January 1, 2001, and
5 subsequently approved by the Commission, and made by an incumbent electric
6 utility that is not currently bound by a rate case settlement adopted by the
7 Commission that extends in its application beyond January 1, 2002. If such rate
8 application is filed, the rates proposed therein shall go into effect on January 1,
9 2001, but such rates shall be interim in nature and subject to refund until such
10 time as the Commission has completed its investigation of such application. Any
11 amount of the rates found excessive by the Commission shall be subject to
12 refund with interest, as may be ordered by the Commission. The Commission
13 shall act upon such applications prior to commencement of the period of
14 transition to customer choice ~~and capped rates determined pursuant to such~~
15 ~~applications shall become effective on January 1, 2001.~~ Such rate application
16 and the Commission's approval shall give due consideration, on a forward-
17 looking basis, to the justness and reasonableness of rates to be effective for a
18 period of time ending as late as July 1, 2007. The capped rates established
19 under this section, which include rates, tariffs, electric service contracts, and rate
20 programs (including experimental rates, regardless of whether they otherwise
21 would expire), shall be such rates, tariffs, contracts, and programs of each
22 incumbent electric utility, provided that experimental rates and rate programs
23 may be closed to new customers upon application to the Commission.

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

15 C. A utility may petition the Commission to terminate the capped rates to all
16 customers anytime after January 1, 2004, and such capped rates may be
17 terminated upon the Commission finding of an effectively competitive market for
18 generation services within the service territory of that utility. If the capped rates
19 are continued after January 1, 2004, an incumbent electric utility which is not, as
20 of the effective date of this chapter, bound by a rate case settlement adopted by
21 the Commission that extends in its application beyond January 1, 2002, may
22 petition the Commission for approval of a one-time change in the nongeneration
23 components of such rates.

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

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

16

17
